

Exhibit L

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF DISTRICT OF TEXAS

MARY LALIBERTE, et al.,)
)
Plaintiffs,)
)
vs.) No. 4:22-cv-03290(AHB)
)
QUANTA SERVICES, INC.,)
et al.,)
)
Defendants.)
_____)

DEPOSITION VIA VIDEOCONFERENCE OF
RICHARD A. MARIN, an expert witness
herein, taken by Morgan, Lewis &
Bockius, LLP, at Escondido, California,
at 9:01 a.m., Friday, October 18, 2024,
before Bonnie Ann Grose, CSR 11703.

Job No. CS6946843

1 APPEARANCES OF COUNSEL:

2
3 For Plaintiff and Witness:

4 MILLER SHAH, LLP

5 BY ALEC J. BERIN (Via videoconference)

6 1845 Walnut Street, Suite 806

7 Philadelphia, Pennsylvania 19103

8 (610) 891-9880

9
10 For Defendant:

11 MORGAN, LEWIS & BOCKIUS, LLP

12 BY JEREMY P. BLUMENFELD (Via videoconference)

13 KERI L. ENGELMAN (Via videoconference)

14 MARIA DeCASTRO (Via videoconference)

15 MATTHEW McKENNA (Via videoconference)

16 1701 Market Street

17 Philadelphia, Pennsylvania 19103

18 (215) 963-5000

19 Jeremy.blumenfeld@morganlewis.com

1 APPEARANCES OF COUNSEL (Continued):

2
3 For Defendant:

4 QUANTA SERVICES LEGAL COUNSEL

5 BY CAROLYN CAMPBELL (Via videoconference)

6 2727 North Loop West

7 Houston, Texas 77008

8 (713) 629-7600

9
10 Also Present: JASON CHAROUS (Via videoconference)

11 JEFF NICHOLS, Videographer

(Via videoconference)

12
13
14 I N D E X

15 WITNESS: RICHARD A. MARIN

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17 MR. BLUMENFELD 6

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1 ESCONDIDO, CALIFORNIA FRIDAY, OCTOBER 18, 2024

2 8:59 A.M.

3 ***

4 THE VIDEOGRAPHER: Good morning. We are going on
5 the record at 8:59 a.m. on October 18th, 2024. This is
6 Media Unit 1 of the video-recorded deposition of 08:59:58
7 Richard Marin taken by Counsel for Defendant in the
8 matter of Mary Laliberte, et al. versus Quanta Services,
9 Inc., et al. filed in the United States District Court
10 for the Southern District of Texas. The case number is
11 4:22-cv-03290(AHB).

12 This deposition is being conducted remotely using
13 virtual technology. My name is Jeff Nichols 09:00:29
14 representing Veritext Legal Solutions, and I'm the
15 videographer. The court reporter is Bonnie Ann Grose
16 from the firm Veritext Legal Solutions.

17 Counsel will now please state their appearances and
18 affiliations for the record starting with the noticing
19 attorney, please.

20 MR. BLUMENFELD: Good morning. Hi. This is
21 Jeremy Blumenfeld from Morgan Lewis on behalf of the
22 defendants. We also have on behalf of defendants
23 Matthew McKenna from Morgan Lewis, Keri Engelman from 09:00:57
24 Morgan Lewis, Maria DeCastro from Morgan Lewis,
25 Carolyn Campbell, in-house Counsel at Quanta, and

1 Jason Charous, consultant, helping us in connection with
2 the matter.

3 MR. BERIN: Good morning. Alec Berin from Miller
4 Shah representing the plaintiff and the witness in
5 today's proceeding, Mr. Richard Marin.

6 THE VIDEOGRAPHER: Thank you. Will the court
7 reporter please swear in the witness, and then Counsel,
8 you may proceed.

09:01:24

9
10 RICHARD A. MARIN,
11 an expert witness herein, having been sworn, testifies
12 as follows:

13
14 -EXAMINATION-

15
16 BY MR. BLUMENFELD:

17 Q. Thanks, Mr. Marin.

18 Can you see me okay?

19 A. I can, yes.

20 Q. And you can hear me okay?

21 A. Yes, I can.

22 Q. Terrific.

23 I know you've been deposed many times, so I'm not
24 really going to go through the ground rules you might
25 typically hear at the beginning of the deposition.

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1 There's a lot of stuff I want to cover, but I also 09:01:59
2 recognize there are technology issues that sometimes
3 arise. If you have a problem, and you have trouble
4 either hearing me or seeing me or looking at a document
5 or what have you, please just let me know, and we'll
6 either take a break or figure out a way to solve that.

7 Okay?

8 A. Very good.

9 Q. Great. We can take a break approximately every
10 hour or so. Just let me know, and we'll find a good
11 time to do so at your leisure.

12 A. Okay. Thank you.

13 Q. Sure. 09:02:30

14 You were recently an expert in connection with the
15 Genworth ERISA class action; correct?

16 A. Correct.

17 Q. And you were also an expert in connection with
18 the Prudential ERISA class action?

19 A. Correct.

20 Q. Any other ERISA class actions in which you have
21 provided an expert report?

22 A. Yes.

23 Q. What cases?

24 A. I think they were all attached to my report, if 09:02:59
25 I may reference that.

1 Q. Sure. If you need to do that, that's fine. So
2 let's start by marking that as an exhibit so it's
3 formally in the record.

4 A. Okay.

5 Q. Exhibit 1 to your deposition is a copy of your
6 August 1, 2021 expert report.

7 A. Correct.

8 Q. I see you have a hard copy of that document.

9 A. I do. The only thing I didn't bother to do is
10 print off exactly what you're asking me to reference 09:03:30
11 right now, which is my own resume and my own listing of
12 cases. But to the best of my recollection, there have
13 been several other ERISA cases. One was the DST case
14 several years ago and --

15 Q. Mr. Marin, it's important to me that I get a
16 truthful and complete answer, so if you want to look at
17 your expert report that you were able to download a 09:03:57
18 couple of minutes ago just to make sure we get them all.

19 A. Okay. Will do. I'm referencing this right
20 now. Okay. Okay. Let me just -- Let's see here. 09:04:14
21 Okay. Those were foreign pension funds, so not that.

22 The DST systems I mentioned already.

23 Iowa Public Employees Retirement System case, which
24 was a securities lending class action brought against 09:04:55
25 where I represented the plaintiff against mostly all of

1 the prime brokerage firms in the country representing
2 Iowa Public Employee Retirement Systems.

3 Los Angeles County Employee Retirement System,
4 Orange County, Sonoma County Retirement, so that was
5 another case. Let's see. I don't believe that's an -- 09:05:27
6 we said Prudential, we said Genworth, and that would be
7 it.

8 Q. Great. Thank you.

9 The Iowa Public Employees Retirement System versus 09:05:57
10 Bank of America et al. case?

11 A. Yes.

12 Q. Do you know what that case was about?

13 A. Yes. It was basically about securities lending
14 and the transparency or lack thereof that prime brokers
15 use when they represent -- when they borrow securities
16 from major ERISA funds like Iowa Public Retirement
17 System.

18 Q. Okay.

19 And are you confident that the claims in that case 09:06:28
20 were, in fact, ERISA claims? And I ask because the Iowa
21 Public Retirement System is a public entity.

22 A. Yes, yes. Okay. The answer -- the answer
23 is -- no, you're correct. It may not have been ERISA
24 claims. Thank you for reminding me of that. They were
25 indeed retirement systems. They're non-retirement-based

Page 10

1 ERISA claims because they're public funds. You are 09:06:59
2 correct.

3 Q. Got it.

4 And did anything in that case involve evaluating
5 investment options in any retirement systems?

6 A. No.

7 Q. What was the DST case about?

8 A. The DST case was a case involving a 401K plan
9 of DST systems, and it had to do with -- it was an
10 arbitration, and it had to do with the excess 09:07:29
11 concentration in one particular stock that basically
12 harmed the participants through over-concentration, and
13 it was a case initially brought against both the
14 committee of the plan sponsor as well as the investment
15 manager involved. Investment manager settled early, and 09:07:59
16 then it continued as an arbitration against the
17 committee of the plan sponsor and was heard on the basis
18 of five to seven individual participants of the
19 400-some-odd participants in the plan. So we basically
20 had individual arbitrations representing groupings of 09:08:27
21 those participants over the course of 18 months, so sort
22 of one set of arbitration hearings every week for 18
23 months or so.

24 Q. You testified in one arbitration hearing a week
25 for 18 months?

1 A. Yes.

2 Q. And how long was your testimony in each of
3 these arbitrations?

4 A. Well, they used an agreed-upon technique for 09:08:54
5 the expert testimony of having one question and
6 cross-examination session recorded. They played the
7 recorded expert sessions for those arbitrators during
8 the week, and then on Fridays of each week, literally
9 each week, I was asked, as were the other experts, to be 09:09:29
10 available for questions from the arbitration panel or
11 questions from either of the two opposing Counsels, so
12 it was -- I didn't have to repeat myself every week.
13 They used the recordings for that, but I almost always
14 had to answer some questions each week from the
15 different arbitration panels.

16 Q. Okay.

17 And the stock that was at issue in the DST systems
18 case was Valient Pharmaceuticals; correct?

19 A. That's correct.

20 Q. And the mutual fund that was being challenged
21 the in the DST Systems case, what was the concentration
22 of that fund in Valient Pharmaceuticals?

23 A. It ranges over the referenced period from,
24 let's say, 20 percent of the fund to 47 percent of the
25 fund.

09:10:30

1 Q. And your opinions in that case was that that
2 was an excessive concentration in a single security and
3 made the fund an imprudent investment choice?

4 A. Yes.

5 Q. Did you employ a methodology looking at
6 three-year performance and five-year performance similar
7 to what you did in this case in the DST Systems case?

8 A. Well, this is going back three or four years
9 now. I would have to go back and reference that 09:10:57
10 information, but it wouldn't surprise me if I used -- we
11 used three- and five-year averaging. I just don't
12 recall offhand.

13 Q. Okay.

14 And do you have copies of any arbitration decisions
15 involving the DST systems case?

16 A. No, I don't.

17 Q. Do you know if there were written explanations
18 with opinions?

19 A. I do not, but I'm sure that's available through 09:11:29
20 the system. I was just told in general the outcome by
21 the attorneys involved, and they were generally fairly
22 pleased with the outcome of those arbitrations, and they
23 felt that they had received adequate compensation for
24 their participants in the order of magnitude of hundreds
25 of millions of dollars, is what I was told. I didn't

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1 see it in writing. I was merely told that.

09:11:57

2 Q. Okay.

3 DST Systems didn't involve any target date funds;
4 correct?

5 A. No.

6 Q. The Iowa Public Employees Retirement System
7 case didn't service any target date funds; correct?

8 A. Correct.

9 Q. And the Prudential case didn't involve any
10 target date funds?

11 A. No, I don't believe it did.

12 Q. The Genworth case did involve target date
13 funds, specifically the BlackRock target date funds;
14 right?

09:12:26

15 A. That's correct.

16 Q. Are there any other cases on your CV in which
17 you have testified as an expert that involve target date
18 funds whether it's an ERISA case or not?

19 A. Not that were of issue. In other words, for
20 all I know the DST fund may have had a target fund
21 sleeve, but it wasn't at issue, so it wasn't a focus of
22 mine.

23 Q. Thank you. I appreciate the clarification.

24 Mr. Marin, are you a participant in any 401K plans
25 today?

09:12:59

1 A. No.

2 Q. Have you been in the last 20 years?

3 A. Yes.

4 Q. What plans?

5 A. Last 20 years? Well, I was -- Slightly more

6 than 20 years ago I was in the Bankers Trust Company.

7 Had a 401K plan. I was in the Bear Stearns 401K plan, I 09:13:24

8 was in the Deutsche Bank 401K plan, and have been in

9 several others with some smaller businesses that I

10 became affiliated with. All of them have been put into

11 rollover IRAs at this point, so I'm not still in any

12 401K plans at this point.

13 Q. Got it.

14 Do you still have the rollover IRAs?

09:13:58

15 A. Yes.

16 Q. How many do you have?

17 A. I have two.

18 Q. Okay.

19 I don't need to know the amounts that are invested

20 in the rollover IRAs, but can you tell me what they are

21 invested in?

22 A. I was raised -- because I was the senior

09:14:26

23 fiduciary at Bankers Trust Company for many years and

24 was always cognizant of the need to be careful about

25 conflict of interest, so I never managed my own funds.

Page 15

1 I always either had them managed by other people,
2 outside managers, so my IRA funds are managed by JP
3 Morgan Asset Management.

09:14:59

4 Q. Both of them, both of the rollover IRAs?

5 A. Yes.

6 Q. Okay.

7 Are they invested in mutual funds?

8 A. Well, I have to be honest with you. I don't
9 look at them very often, but I imagine there are some.

10 Q. Can you identify for me what mutual funds you
11 are invested in?

12 A. No, I cannot. I literally take a hands-off
13 approach to my own investments.

09:15:26

14 Q. You don't monitor your own investment on a
15 quarterly basis?

16 A. Oh, I monitor them, but I don't, let's say, get
17 involved in the grand detail. I have
18 investment-management people that I've had for over 20
19 years, and I put my trust and faith in them, because
20 like I said, for my entirety of my professional career I
21 have taken a hands-off approach to avoid any potential
22 semblance of conflict of interest.

09:15:58

23 Q. Okay.

24 Do you know if you're invested in any target date
25 funds today?

1 A. I don't believe I am, no.

2 Q. Okay.

3 But you don't know what you are invested in?

4 A. I am -- I cannot recite my investments, no.

5 Q. Okay.

6 And you don't review your current investments
7 against some sort of benchmark on a quarterly basis?

8 MR. BERIN: Object to form.

09:16:29

9 THE WITNESS: I have regular meetings with my
10 investment managers, and we discuss performance in
11 general.

12 MR. BLUMENFELD:

13 Q. You don't discuss performance against the
14 benchmarks of the investments that you are invested in
15 on a quarterly basis or annual basis or on any sort of
16 basis?

17 A. No, not very often.

18 Q. Okay.

19 When was the last time you had such a meeting?

20 A. Well, I used to be -- My accounts used to be 09:17:00
21 handled at First Republic Bank, and there was a
22 transition bringing them all into JP Morgan, so that all
23 occurred in May of this year.

24 Q. So you had a meeting with the folks at JP
25 Morgan in May of this year?

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1 A. Well, I talk to them more regularly than that,
2 but we had a specific discussion about them -- the
3 accounts when they transferred over in May of this year,
4 and I probably talked to my investment manager there.
5 And I met with him once since then probably in August,
6 and I've probably talked to him about it on the phone on
7 one issue or another a half a dozen times.

09:17:29

8 Q. Okay.

9 You don't remember from your meeting in August of
10 this year what investments you hold?

09:18:00

11 A. No.

12 MR. BERIN: Object to form.

13 MR. BLUMENFELD:

14 Q. Okay.

15 And when your funds were managed by First Republic,
16 do you know what you were invested in during that time
17 period?

18 A. No, but I know that there hasn't been much
19 change as it's transitioned from First Republic to JP
20 Morgan other than normal portfolio rebalancing.

21 Q. How long was your money managed by First
22 Republic?

09:18:29

23 A. I'm going to say 20 to 25 years.

24 Q. And as you sit here today, you can't identify a
25 single mutual fund that you are invested in during that

1 20-to-25-year time period?

2 A. You know, let me just repeat it for you,
3 Jeremy. I was brought up to stay hands-off on my own 09:18:58
4 personal investments, so I don't review them in
5 specificity. I leave that to my investment managers who
6 are trusted advisors for me.

7 Q. Do you know what criteria First Republic used
8 to monitor the investment options -- excuse me, not the
9 investment options.

10 Do you know what criteria First Republic used to
11 monitor the investments that it was managing in your 09:19:29
12 account?

13 A. No.

14 Q. Do you know the criteria that JP Morgan
15 currently uses to monitor the investments that it is
16 managing for you?

17 A. Not specifically, no.

18 Q. Do you know generally?

19 A. I'm familiar with JP Morgan's
20 investment-management area because they were a
21 competitor of ours for many, many years, but I don't
22 know specifically what methodologies they use in 09:19:56
23 managing their investments, no.

24 Q. So you don't know what criteria JP Morgan
25 currently used to select investments for you; correct?

1 A. I know -- I know my investment manager very
2 well, and I know that his approach hasn't changed from
3 First Republic to JP Morgan.

4 Q. Okay.

5 Can you answer my question?

6 A. Would you repeat it, please?

7 Q. Do you know what criteria JP Morgan uses to
8 select investments for your account?

9 A. Not that I can recite to you and specify to
10 you, no.

11 Q. Okay.

12 Do you know what criteria JP Morgan uses to monitor
13 the investments that are in your account?

14 A. They use normal monitoring methodologies used 09:20:59
15 by major money-management firms.

16 Q. Can you be more specific than that?

17 A. No, I cannot.

18 Q. Okay.

19 And do you know what criteria First Republic used
20 to select the investments that it was including in your
21 account?

22 A. It has been done over many years, so the answer
23 is no.

24 Q. Okay.

25 And do you know what criteria First Republic used 09:21:28

1 to monitor the investments that were in your account?

2 A. Not specifically, no.

3 Q. Does SEDA Experts have a defined contribution
4 plan?

5 A. I'm not an employee of SEDA. I am -- meaning a
6 W-2 employee. I do, I guess you'd call it, gig work in 09:22:00
7 terms of doing expert witness work. I'm a 1099
8 recipient, so I'm not familiar with their retirement
9 plans because I don't participate in them.

10 Q. Do you know if they have one?

11 A. No, I don't. I don't know specifically.

12 Q. Okay.

13 And I take it, then, you're not a fiduciary of the
14 SEDA Experts' 401K plan? 09:22:27

15 You're not involved at all in the SEDA Experts'
16 401K plan if such a plan exists?

17 A. No.

18 Q. And if the SEDA Experts' 401 plan has target
19 date funds in it?

20 A. No, I don't.

21 Q. Aside from your work as an expert in the
22 Genworth case and in this case, do you have any other
23 experience in connection with your work at SEDA that
24 relates to target date funds?

25 A. No.

Page 21

1 Q. You also list in your CV that you did work for 09:23:01
2 Low Emissions Resource Corporation?

3 A. Yes.

4 Q. Does that have a defined contribution plan?

5 A. They did not have a defined contribution plan,
6 no.

7 Q. Did Low Emissions Resource Corporation have 09:23:34
8 anything to do with target date funds?

9 A. No.

10 Q. When you were at Low Emission Resource
11 Corporation, did you do any work on defined contribution
12 plan investment and monitoring, whether it's target date
13 funds or anything else?

14 A. For that company, no.

15 Q. For anybody?

16 A. Well, you're talking about a period of time
17 when I was teaching, and because I teach courses in the 09:23:59
18 investment area and in the pension area, and indeed it
19 was during those years I was doing expert witness work,
20 the answer is yes, I had involvement to the extent that
21 it came into the issues of expert witness work or my
22 teaching.

23 Q. Was your teaching done in connection with
24 anything from Low Emissions Research Corporation? 09:24:30

25 A. No.

1 Q. And your testifying work was also not in
2 connection with Low Emissions Research Corporation;
3 correct?

4 A. No.

5 Q. Okay.

6 Do you know the name of the textbooks you used to
7 teach?

8 A. I generally didn't use textbooks because I
9 teach the practicum generally, and therefore I pulled
10 together materials. I had sort of reading packages of 09:24:58
11 different excerpts from books and different excerpts
12 from articles and other information available to teach
13 from, not a specific textbook.

14 Q. You would pull together portions of certain
15 books and portions of certain articles?

16 A. Yes.

17 Q. Do you remember the names of any of them? 09:25:29

18 A. No, not offhand.

19 Q. Okay.

20 You also list on your CV work you did for New York
21 Wheel, LLC?

22 A. Correct.

23 Q. Did that have a defined contribution plan?

24 A. Yes. I believe it did for a short period of
25 time, and that plan was managed by our payroll company.

Page 23

1 This was a small company, and I had since been rolled 09:25:52
2 over into my overall rollover IRA.

3 Q. Do you recall what investment options were in
4 the New York Wheel, LLC defined contribution plan?

5 A. No, I don't recall.

6 Q. Do you recall if there were any target date
7 funds in it?

8 A. I don't recall.

9 Q. And did you play any role with regard to the
10 defined contribution plan at New York Wheel?

11 A. Well, I was the CEO, and as such I was involved 09:26:29
12 in approving the use of the plan. But no, I wasn't
13 involved on a regular basis at that point.

14 Q. Were you a fiduciary for the New York Wheel
15 plan?

16 A. No.

17 Q. This says on your CV that you were there from
18 2011 to 2018; correct?

19 A. Correct. 09:27:00

20 Q. And I just want to be clear about this.

21 You don't remember now whether that plan offered
22 any target date funds?

23 A. Well, the plan wasn't available the whole time
24 of my employment. It was just available for a period of
25 time, and the answer is no, I don't remember.

1 Q. Okay.

2 What period of time was it available?

3 A. I -- I don't have the dates on the top of my
4 fingers. I'm going to guess that out of those six or 09:27:29
5 seven years it was probably available for three.

6 Q. You think it was the last three?

7 A. No. I think it was probably the middle three.

8 Q. Okay. Thank you.

9 Approximately how many employees did New York Wheel
10 have?

11 A. Direct employees, because we tended to use
12 contractors a lot, direct employees probably as many as 09:27:56
13 ten.

14 Q. And who was the payroll company that you said
15 managed that 401K plan?

16 A. I've forgotten the name.

17 Q. Did Ironwood Global have a defined contribution 09:28:26
18 plan?

19 A. No.

20 Q. Does Ironwood Global have anything to do with
21 target date funds?

22 A. No.

23 Q. Did Ironwood Global evaluate mutual funds?

24 A. No.

25 Q. You also worked for a company called Africa 09:28:57

1 Israel Investments?

2 A. Correct.

3 Q. Did that have a defined contribution plan?

4 A. No, they did not.

5 Q. Did Africa Israel Investments have anything to
6 do with target date funds?

7 A. No.

8 Q. Did it have anything to do with mutual funds?

9 A. No.

10 Q. What's Duff Capital?

09:29:32

11 A. Duff Capital was a startup hedge fund platform
12 that was, you know, highly funded by a private equity or
13 venture capital firm, and I acted as a consultant to
14 them for about a year.

15 Q. What did you do for Duff Capital?

16 A. I worked specifically on securities-lending
17 platforms and overall pension marketing plans for how to
18 market the fund into defined benefit and eventually
19 defined contribution plans.

09:29:59

20 Q. Was Duff Capital operating a mutual fund?

09:30:27

21 A. No.

22 Q. What kind of investment was it?

23 A. It was a multi-strategy hedge fund.

24 Q. That you were trying to sell to defined benefit
25 and defined contribution plans?

1 A. Well, during the year when I acted as a
2 consultant to them they were in the formative stages.
3 This was, as I said, an extremely well funded,
4 400 million-some dollars as I recall, a hedge fund 09:31:00
5 platform to go after a very large universe of investors,
6 and as such they were looking to figure out how to
7 position their hedge fund to take advantage of issues
8 like platform-based institutional securities lending and
9 also how to position themselves to go after defined -- 09:31:28
10 large blocks of defined benefit money, eventually --
11 didn't get to this point but eventually then how to
12 create sleeves that would have qualified as mutual
13 fund-type sleeves for defined contribution.

14 Q. Do you know if that ever happened?

15 A. I don't believe the last part ever happened.
16 Duff Capital basically went into extinction when the 09:31:56
17 markets collapsed hard in 2008 and 2009.

18 Q. Do you know when Duff Capital was formed?

19 A. Well, I believe it would have been the middle
20 or the end of 2007.

21 Q. Did it have any pension fund investors?

22 A. At that point, no. 09:32:30

23 Q. Sorry.

24 When you say "at that point," do you mean --

25 A. At the point when I was involved with it, which

1 was basically from the beginning of 2008 until the end
2 of 2008. October or so of 2008 they did not have any
3 pension fund investors. They were merely in the
4 preparation, platform-building stage during that year. 09:32:56

5 Q. On your CV you also identify that you worked
6 for Bear Stearns Assets Management from 2003 to 2007; is
7 that correct?

8 A. That's correct.

9 Q. Bear Stearns did have a 401K plan?

10 A. They did.

11 Q. You were a participant in it?

12 A. I was.

13 Q. Do you recall any of the investments that you
14 invested in within the Bear Stearns 401K plan?

15 A. No. That's too long ago. I don't remember.

16 Q. Okay.

17 Did you play a role in connection with the Bear 09:33:29
18 Stearns 401K plan aside from as a participant in it?

19 A. No.

20 Q. You weren't a fiduciary for the plan?

21 A. Well, I was effectively the senior fiduciary
22 for the buy side of the business since I was chairman
23 and CEO of Bear Stearns Asset Management, so that had
24 less -- That did not have anything to do with managing 09:33:57
25 the defined contribution plan of the firm overall, but I

1 was senior fiduciary for the 50 to 60 billion dollars
2 that we managed for others including defined benefit and
3 defined contribution plans.

4 Q. Okay.

5 A. And there were a number of mutual funds there,
6 yes.

7 Q. There were a number of Bear Stearns mutual
8 funds?

9 A. Correct.

10 Q. That Bear Stearns offered to third-party 09:34:29
11 defined contribution plans that might want to invest in
12 them or other investors that might want to invest in
13 them?

14 A. Correct.

15 Q. Do you know if the Bear Stearns 401K plan
16 invested in any of them?

17 A. I believe they did, yes.

18 Q. Do you recall which ones?

19 A. No.

20 Q. Am I right that your experience with respect to
21 investments really derives from your time at Bear 09:34:59
22 Stearns and Beehive Ventures and Deutsche and Bankers
23 Trust?

24 A. Yes, that and teaching.

25 Q. And teaching and your expert testimony?

1 A. Correct.

2 Q. But you stopped working at Bear Stearns in
3 2007; correct?

4 A. That's correct.

5 Q. So aside from your teaching work that you do
6 and your testifying work, you haven't been involved in
7 the asset-management business really since 2007? 09:35:28

8 A. Not directly working for the asset-management
9 business, but in almost every position that I worked in
10 we had generally received funding in one form or another
11 from people in the investment-management business. As
12 an example, in the Africa Israel case many co-investors
13 in transactions that we were involved in; therefore, I
14 had to negotiate with, were indeed defined benefit 09:35:59
15 pension plans, not so much defined contribution but
16 defined pension plans. So my involvement with the
17 pension community and pension market was extensive
18 during those years even without being actually employed
19 by the asset-management industry.

20 Q. You resigned your employment with Bear Stearns; 09:36:28
21 correct?

22 A. I did, yes.

23 Q. Were you told that you either needed to resign
24 or that your employment would be terminated?

25 A. No, no. They specifically wanted me to stay,

1 reasons for which might be an interesting issue, but I
2 chose to leave on my own accord. I was not asked to
3 leave.

4 Q. And you were the chairman and chief executive
5 of the asset management that lost billions of dollars in 09:36:59
6 connection with some of the specific funds that Bear
7 Stearns was managing; correct?

8 A. They were two specific hedge funds that, as
9 they say, hit the wall in the beginning of the, let's
10 call it, liquidity crisis, mortgage bank security
11 crisis. It took large losses. When I left the firm, I
12 would say the losses were in the range of about 09:37:27
13 \$1.5 billion.

14 Q. And while you were still there, both of those
15 funds actually had to file for bankruptcy; correct?

16 A. I don't remember the exact date of the filing
17 for bankruptcy, but my guess is they filed at some point
18 after I left my position because I stayed with Bear
19 Stearns for several months, call it six months after I
20 left as head of asset management. So I believe the
21 filing took place while I was still employed by Bear 09:38:00
22 Stearns, yes.

23 Q. Did Bear Stearns manage any target date funds?

24 A. No.

25 Q. Did it offer any target date funds in the

1 marketplace generally?

2 A. No.

3 Q. And am I correct that you while you were at 09:38:28
4 Bear Stearns you had no experience with any target date
5 funds?

6 A. No. That's not true. We -- As part of the
7 ongoing mutual fund effort, we spent a lot of time
8 looking into different areas, target date funding one,
9 ETFs being another. We spent a lot of time in our -- in
10 our sort of planning purposes looking at different ideas 09:38:58
11 of getting involved, but we did not ultimately offer
12 any.

13 Q. And so when you were at Bear Stearns, you
14 didn't spend any time evaluating the performance of any
15 target date funds to see whether they were reasonable
16 investments or not reasonable investments?

17 A. Well, as part of the process of deciding
18 whether to go into the market, we looked at competitive
19 funds on a regular basis and examined their performance 09:39:28
20 and how people were building those products to offer
21 into the defined contribution market, so I would say
22 there was an element of evaluation involved, yes.

23 Q. Do you recall evaluating the Fidelity Freedom
24 Funds?

25 A. Not specifically, no.

1 Q. Do you recall evaluating any target date funds?

2 A. Again, the specificity eludes me at this point

3 in time. That was too long ago, but we did indeed look 09:39:59

4 at a number of different funds.

5 Q. And do you recall how many target date fund

6 families existed at the time?

7 A. No, not specifically.

8 Q. And do you recall what criteria you were using

9 to evaluate the target date funds that you looked at

10 when you were at Bear Stearns?

11 A. I recall looking at these funds using a series 09:40:28

12 of different methodologies, yes.

13 Q. Do you recall what the methodologies were?

14 A. Sure. I mean, I recall looking at the -- Let's

15 call it the various risk characteristics. I recall

16 looking at the glide path issues of the different

17 vintages. I recall looking at the various blends of 09:41:01

18 instruments to be used in those funds. I recall looking

19 at different Sharpe ratios, Alpha calculations,

20 information ratios, Sortino ratios, all different sort 09:41:26

21 of measurement criteria.

22 Q. Do you remember specifically looking at with

23 respect to target date funds in the 2003 to 2007 time

24 frame, looking at Sharpe ratios, Alpha, Sortino ratios;

25 correct?

1 A. Yes.

2 Q. And you recall looking at glide path issues
3 with respect to target date funds in the 2003 to 2007
4 time period?

09:41:59

5 A. Yes. I think one of the -- one of the things I
6 will mention is that, you know, lifestyle funds was
7 something that was very similar to target date funds, so
8 I guess I would throw lifestyle funds into the same
9 category as target date funds. These were different
10 versions of the same fundamental product in terms of
11 offering PC participants mechanisms in terms of
12 glide-path-driven investment approach.

09:42:27

13 Q. Do you know who the consultant was, if there
14 was one, for the Bear Stearns 401K plan?

15 A. I don't recall.

16 Q. Do you know if there was one?

17 A. I'm sure there was, but I don't recall who it
18 was.

19 Q. And do you know who was on the committee for
20 the Bear Stearns 401K plan to evaluate the investment
21 options in that plan?

09:42:56

22 A. I don't know specifically. But again, I knew
23 all of the senior people in the firm, so I could
24 probably make an educated guess.

25 Q. I don't need you to guess.

1 I understand you might know from amongst whom those
2 people might be, but you don't know who was on the
3 committee for the 401K plan for Bear Stearns to evaluate 09:43:28
4 the investment options in that plan?

5 A. No.

6 Q. The people that you know who were the leaders
7 of Bear Stearns you know were smart, thoughtful, and
8 thorough people?

9 A. Yes.

10 Q. Knowledgeable about investments?

11 A. Yes.

12 Q. And do you know the criteria that they utilized
13 when evaluating the funds that were in the Bear Stearns
14 401K plan?

15 A. Not specifically, no. 09:43:59

16 Q. Do you know generally?

17 A. Yes, generally.

18 Q. Tell me.

19 A. Well, they would look at risk-return issues.

20 They would look at different ratios. They would look at

21 different benchmark performance tracking. They would

22 look at tracking error issues when it comes to passive

23 sums. They would look at the array that was being

24 offered to make sure it was a fulsome array. They would 09:44:30

25 look at all of what I would call normal monitoring and

1 tracking processes that one would use to track a
2 portfolio of investments.

3 Q. Do you think the Bear Stearns fiduciaries would
4 have looked at all of -- did you say normal things?

5 A. Normal investment criteria. 09:44:59

6 Q. And did you understand that the Bear Stearns
7 fiduciaries would remove investment options from that
8 plan if they thought they were no longer appropriate
9 choices for plan participants?

10 A. Yes.

11 Q. In paragraph 31 of your report, you articulate
12 a set of criteria to use when evaluating investment
13 options; correct?

14 A. Can I look at my report? 09:45:29

15 Q. Yeah.

16 A. Anywhere specifically in 31?

17 Q. Paragraph A, B, C, and D and then E. 09:45:58

18 A. Okay. Would you like me to read through these?

19 Q. I mean, you could read through them yourself.

20 You don't need to read them out loud.

21 A. Yeah. That's what I meant.

22 Q. Sure. 09:46:21

23 (Pause in the proceedings.)

24 THE WITNESS: Okay. I've reviewed it.

25 MR. BLUMENFELD:

1 Q. My question was, in paragraph 31 you describe
2 the monitoring criteria for investment options in a
3 defined contribution plan; correct?

4 A. I do. And this is specifically referencing
5 this plan, and it specifically references the criteria 09:46:58
6 that are described in the IPS.

7 Q. Okay.

8 That's a good segue.

9 Is it your opinion in paragraph 31 that these are
10 criteria that apply to the Quanta plan but that don't
11 apply to other defined contribution plans?

12 A. I know they apply to the Quanta plan. Each
13 plan is different, so I can't respond as to whether they 09:47:26
14 applied to other plans or not. They're fairly generic,
15 in my opinion. There's nothing about them that makes
16 them 100 percent unique to the Quanta plan. They're
17 similar to other criteria I have seen applied to similar
18 plans. I mean, they all have benchmarks. They all have
19 the same kind of ratio examination, the Alphas and the 09:47:55
20 information ratios, and the Sharpe ratios and asset size
21 and that sort of thing and peer group rankings. So it's
22 similar to other plans, but I can't state specifically
23 if they should be applied to every other plan. Every
24 plan is unique.

25 Q. Okay.

1 And so you're saying that you applied the
2 monitoring criteria you described in paragraph 31 based 09:48:27
3 on the "Investment Policy Statement" that Quanta had in
4 connection with their plan; correct?

5 A. Correct.

6 Q. Okay.

7 You also say, though, in your report that -- in
8 paragraph 29 that these are monitoring criteria that you
9 have used and applied throughout your career.

10 A. That's correct.

11 Q. Okay.

12 So it's not just specific to the Quanta plan.
13 These are the criteria that you have seen and used
14 throughout your career at least? 09:48:58

15 A. Yes.

16 MR. BERIN: Object to the form.

17 MR. BLUMENFELD:

18 Q. And in paragraph 31-E you also define the
19 framework that you're talking about as being customary
20 in the retirement industry.

21 A. That's correct.

22 Q. So is it your opinion that plan fiduciaries 09:49:30
23 customarily use the same monitoring criteria that you're
24 describing in paragraph 31?

25 A. Well, as I said, every plan is unique. I do

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1 believe that this is not an unusual framework and that
2 it is more typical than not to what you see in the
3 investment area.

09:49:58

4 Q. Okay.

5 Are you aware of any other plans that used the
6 criteria that you talk about in paragraph 31 in the way
7 you described it in paragraph 31 aside from the Quanta
8 plan?

9 A. Well, this is not dissimilar. Just to take one
10 that you've already mentioned, it's not totally
11 dissimilar to what is used at Genworth.

12 Q. When you say "not dissimilar from what was used 09:50:26
13 at Genworth," is that the only one you can think of?

14 A. I have worked with so many different defined
15 contribution plans over my career, all I'm going to do
16 is specify that this is similar to what I've seen in
17 many plans.

18 Q. Okay.

19 When you say it's similar to what you saw in
20 Genworth, are you talking about your opinions in
21 Genworth or what the plan fiduciaries for the Genworth 09:50:56
22 plan were doing?

23 A. I'm talking about the framework used for
24 evaluating funds in the Genworth plan.

25 Q. What Genworth used or what you say Genworth

1 should have used?

2 A. What -- what Genworth used and -- and what my
3 experience tells me is normal to be used.

4 Q. Okay.

5 So you believe that the plan fiduciaries of the 09:51:29
6 Genworth plan used the same framework that you describe
7 as a reasonable framework in paragraph 31 of your
8 report?

9 MR. BERIN: Object to the form of the question.

10 THE WITNESS: They're -- I don't want to
11 characterize it as exactly the same. My sort of
12 overriding comment is that every plan is different.
13 What I'm saying is that this framework is not dissimilar 09:51:56
14 to what is used elsewhere like in Genworth.

15 MR. BLUMENFELD:

16 Q. And I just want to be clear.

17 When you say "used elsewhere as in Genworth," you
18 offered opinions in the Genworth case; correct?

19 A. Yes.

20 Q. And you said the Genworth plan fiduciaries
21 essentially made bad investment decisions by maintaining
22 the BlackRock target date funds in that plan; correct?

23 A. Yes.

24 Q. Are you saying that what you described in 09:52:28
25 paragraph 31 of your report in this case here is similar

1 to what you described in the Genworth case or similar to
2 what the Genworth plan fiduciaries actually did in the
3 Genworth case?

4 MR. BERIN: Object to the form.

5 THE WITNESS: You're getting into an area of
6 specificity in comparing the situations that I'm not
7 comfortable agreeing with. What I'm saying is that the
8 general framework used to evaluate -- meaning, using 09:52:56
9 benchmarks, using ratio analysis over a period of time,
10 using three- and five-year averaging, those are all
11 similar from what I've seen elsewhere and what I saw in
12 Genworth.

13 MR. BLUMENFELD:

14 Q. Okay.

15 We'll come back to this.

16 Did Beehive Ventures offer a defined contribution 09:53:30
17 plan?

18 A. No.

19 Q. Did it offer any target date funds?

20 A. No.

21 Q. Did Deutsche Asset Management have a 401K plan?

22 A. Yes.

23 Q. Were you in it?

24 A. Yes.

25 Q. Were you a fiduciary of the Deutsche Asset 401K

1 plan?

2 A. Yes.

3 Q. You were responsible for selecting the 09:53:58
4 investment options for the Deutsche 401K plan?

5 A. No, I wasn't involved. But because I ran
6 Deutsche Asset Management, I was, I believe, an
7 ex officio member of that committee.

8 Q. What does it mean that you were an ex officio
9 member, but you weren't involved?

10 A. No, I didn't say that. I never used those 09:54:29
11 words. What I said was I was an ex officio member. I
12 think you know what an "ex officio member" is; right?

13 Q. Tell me.

14 A. It means that you sit in on the committee
15 meetings and are there to advise the committee on
16 various issues having to do with the investments.

17 Q. Were you a voting member?

18 A. No.

19 Q. Okay.

20 Do you recall what investment options Deutsche -- 09:54:59
21 Deutsche Asset Management is part of Deutsche Bank;
22 correct?

23 A. Correct.

24 Q. And the 401K plan actually was the Deutsche
25 Bank 401K plan; right?

1 A. Correct.

2 Q. And do you remember the investment options that
3 were available in the Deutsche Bank 401K plan when you
4 were there?

5 A. No, not specifically.

6 Q. You were there for less than two years;
7 correct?

8 A. Correct.

9 Q. How many meetings did you go to of the Deutsche 09:55:26
10 Bank 401K plan committee?

11 A. I don't remember.

12 Q. Do you remember if it was more than one?

13 A. Yes.

14 Q. But you don't remember any of the investment
15 options?

16 A. No. We were -- we were merging the investment
17 operations of four major investment companies in the US.
18 We had the Bankers Trust Company plans and funds, which
19 had the Alex Brown plans and funds. We had the 09:55:57
20 Morgan Greenfell and Deutsche Bank plans and funds. So
21 it was a rather complicated integration exercise, so I
22 don't remember the specific funds.

23 Q. You don't remember any of them at all for any
24 of those plans?

25 A. Not specifically to reference at this moment in

1 time, no.

2 Q. Did the Deutsche Bank plan have target date
3 funds?

09:56:29

4 A. We had lifestyle funds.

5 Q. And what's a "lifestyle fund"?

6 A. It's like a target date fund. Like I said,
7 lifestyle funds have generally evolved into target date
8 funds, but the lifestyle funds were basically very
9 similar except not specifically linked to a retirement
10 date the way target date funds are. They were sort of
11 stage-of-life funds.

09:56:59

12 Q. More conservative, more aggressive, but they
13 stayed that way; correct?

14 A. They were to be used by participants who were
15 in the various stages of their life, the early stage,
16 the middle stage, the later stage, the post retirement
17 stage. That's what lifestyle funds generally provided.
18 And again, they're very similar, the concept is very
19 similar in glide path construction to target date funds,
20 but the industry has evolved. And sort of it's like
21 Betamax versus the VHS; right? Betamax was a perfectly
22 valid technology, but VHS won the marketing battle, and
23 everybody became VHS oriented. Well, everybody became
24 target date fund oriented. There may still be some
25 residual lifestyle funds out there, but again, I'm not

09:57:26

09:57:57

1 aware of them.

2 Q. Do you remember what lifestyle funds the
3 Deutsche Bank 401K plan offered?

4 A. We offered a full suite of 401 plans for the
5 entire lifestyle parade that was available. These were
6 the ones that came out of Bankers Trust.

7 Q. Were they Bankers Trust lifestyle funds?

8 A. Well, I think they started as Bankers Trust 09:58:29
9 lifestyle funds. But again, we're talking about a
10 series of mergers that occurred and the first merger
11 that occurred with Alex Brown. We picked up a lot of
12 mutual funds in the Alex Brown merger. That was sort of
13 between '97 and '99. And then from '99 to 2001 we went
14 through the merger with Deutsche Bank who had also
15 recently merged with Morgan Greenfell just as we had 09:58:59
16 merged with Alex Brown. So it's a collage of four
17 different investment managers that I was responsible for
18 integrating.

19 Q. So I thought you left Deutsche in December of
20 2000.

21 A. I stayed on as a consultant for a period of
22 time. I said 2001. I believe it went into the early
23 part of 2001.

24 Q. Okay.

25 Did Bankers Trust offer any target date funds? 09:59:30

1 A. No. We had lifestyle funds.

2 Q. Aside from your time at Deutsche Bank, have you
3 ever attended a 401K defined contribution committee
4 meeting to review, monitor, select investment options?

5 A. Did you say "except" for my time?

6 Q. Correct.

7 A. I attended them while at Bankers Trust and
8 while at Deutsche Asset Management. I did not attend 09:59:59
9 any when I was running Bear Stearns Asset Management.

10 Q. Okay.

11 So am I correct that you haven't attended any
12 committee meetings since early 2001?

13 A. Yes. You're correct.

14 Q. Okay.

15 Have you ever served as a consultant for a defined
16 contribution plan?

17 A. We had consultants in all of my 10:00:27
18 investment-management operations. I was not at
19 consultant level, but I had teams of consultants who
20 worked for me, including at Bear Stearns Asset
21 Management.

22 Q. Did the consultants that were at Bear Stearns
23 Asset Management serve as consultants for defined
24 contribution plans making recommendations about what
25 mutual funds to include in their plans? 10:00:59

1 A. I believe so, yes.

2 Q. When you say you "believe," so you're not sure
3 because you weren't in the role?

4 A. I was responsible for it. They reported to me.
5 I monitored their performance. I knew generally what
6 they were doing, who their clients were at the time, and
7 I just don't recall whether or not they had defined
8 contribution plans, but I believe they did.

9 Q. The consultants that you're describing, was it 10:01:27
10 their job to try to sell Deutsche Bank mutual funds?

11 A. Everything that we were -- well, you said
12 Deutsche Bank -- right? -- as opposed to Bear Stearns.
13 Everything that we did in the asset-management area was
14 to serve our institutional or client base, and as such
15 the consultants had to maintain somewhat of an 10:02:01
16 arm's-length approach in providing objective
17 consultation and advice that did not push proprietary
18 product. So we maintained our own sort of version of
19 walls such that their compensation and their evaluation
20 was based on the satisfaction of their clients in 10:02:28
21 providing objective advice, not on their pushing or
22 selling proprietary products.

23 Q. All right.

24 Let's go back to paragraph 31 of your report, if
25 you would. 10:02:55

1 A. Okay.

2 Q. In paragraph 31-B of your report, could you
3 look at that?

4 A. Okay.

5 Q. You say that you were going to "Review the
6 Freedom Funds returns both by vintage and in the
7 aggregate versus the S&P indices such that when more 10:03:28
8 than half of the vintages with a performance history
9 generated three and/or five year returns that failed to
10 beat the relative vintages of the S&P indices, the suite
11 is flagged and placed on watch for greater scrutiny."

12 Do you see that?

13 A. Yes.

14 Q. So first question I have, you say in there
15 "and," slash, "or."

16 Do you see that?

17 A. "And/or," yes. 10:03:59

18 Q. And now, it's not clear to me whether you mean
19 that if more than half of the vintages on a three-year
20 basis fail to beat the relevant indices for five years
21 the suite is flagged and placed on watch or whether you
22 require underperformance on a three-year basis and a
23 five-year basis before a fund is placed on watch.

24 A. Okay. What's your question?

25 Q. Which is it? 10:04:30

1 A. The way the IPS is written, I believe, is to
2 say that it's, you know, three years or longer, so I
3 guess the correct interpretation would be "or," but, you
4 know, we looked at that issue in all the analysis we
5 did. We looked at how the three-year and the five-year
6 returns differed, and in some cases both three- and 10:04:58
7 five-year returns indicated failure and in some
8 instances one or the other, three- or five-years
9 indicated failure. Both of them, I believe, constitute
10 a failure for the IPS.

11 Q. And so three-year underperformance or five-year
12 underperformance in your mind constitutes a failure and
13 therefore requires putting it on watch? 10:05:29

14 A. Yes.

15 Q. Okay.

16 It's not limited to circumstances where both the
17 three-year and the five-year underperformed?

18 A. I don't believe it is, no.

19 Q. Okay.

20 Now, you mentioned the "Investment Policy
21 Statement" for Quanta, and we'll look at that in a few
22 minutes.

23 But aside from the "Investment Policy Statement,"
24 is there some other basis for the opinion you expressed
25 in paragraph 31-B?

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1 A. The other basis for that opinion would be, like 10:06:00
2 I said, my experience over the years of working with
3 defined contribution plans.

4 Q. So that's good, and I'm not surprised to hear
5 you say that.

6 Can you identify for me any plans that utilize the
7 framework that you described in paragraph 31-B for
8 deciding whether a fund needs to be placed on watch
9 list? 10:06:28

10 A. I can -- no, I can't -- I can't give you
11 specific plans. I know that three- and five-year
12 averaging is used in many plans. I believe that's the
13 case with Genworth, and I believe that's the case even
14 with Prudential. Those are the most recent ones I've
15 been looking at and working with, but I've seen many
16 plans over the years that use three- and five-year 10:06:59
17 averaging because it's a prudent way to evaluate a
18 performance over a longer period of time than looking at
19 it on a quarterly basis.

20 Q. Okay.

21 You understand there's a difference between saying
22 that a plan fiduciary should look at three-year
23 performance and looking at five-year performance.
24 There's a difference between that and saying that if a
25 fund underperforms on a three-year basis or a five-year 10:07:27

1 basis it has to be put on watch.

2 Correct?

3 A. Well, the IPS in this instance, you know, has a
4 separate one or two pages in it dedicated to the process
5 for putting things on monitor, alert, or watch. We can
6 call it similar phraseology. That would then have to be
7 carefully monitored and eventually terminated if they 10:07:55
8 did not improve. So that procedure is usually spelled
9 out in the IPS as it certainly is here in the case of
10 Quanta.

11 Q. Mr. Marin, my question was not about the
12 "Investment Policy Statement." My question was about
13 your opinion.

14 You know lots of plans look at three-year
15 performance, and lots of plans look at five-year
16 performance, but you can't identify any plans that put a 10:08:28
17 fund on watch because of underperformance against a
18 benchmark over a three-year time period or against a
19 benchmark over a five-year time period; correct?

20 MR. BERIN: Object to form.

21 THE WITNESS: What I'm telling you is that I've
22 seen many plans that do that. I can't name the plans
23 for you.

24 MR. BLUMENFELD:

25 Q. Okay.

1 Can you name the time period?

2 A. The three- and five-year time period?

3 Q. No, the time period you're talking about when
4 you are aware of a plan that you can't identify that did 10:09:00
5 this.

6 A. Anytime in the last 30 years.

7 Q. Okay.

8 Can you identify a plan in the last ten years that
9 did this?

10 A. I can't identify a specific plan.

11 Q. Okay.

12 Can you identify a plan in last 20 years that did
13 this?

14 A. No.

15 Q. Okay.

16 You also say that you're benchmarking the 10:09:27
17 performance here against the S&P indices; correct?

18 A. I'm benchmarking it against the benchmarks that
19 the IPS has specified, yes.

20 Q. And is the reason that you did that because the
21 IPS specified it?

22 A. Well, that is the primary reason.

23 The secondary reason is that it is very normal in
24 the industry to use the S&P index for any number of
25 evaluations as a benchmark, especially obviously one 10:09:58

1 that involves heavy component of equities, all cap
2 equities.

3 Q. What S&P indices do you think you're using in
4 paragraph 31-B of your report?

5 A. I'm using the S&P index that was provided by
6 the investment consultant quarterly reports.

7 Q. Okay.

8 You believe that the quarterly reports that were 10:10:28
9 being provided to the folks at Quanta contained useful
10 information in evaluating the investment options?

11 MR. BERIN: Object to the form of the question.

12 THE WITNESS: I'm -- I'm presuming that the
13 consultant reports from Ascend during the time period
14 that I'm talking about here contained accurate
15 information that was used to monitor these
16 investments.

17 MR. BLUMENFELD:

18 Q. Okay. 10:11:00

19 Do you remember the S&P index that you're
20 describing in paragraph 31-B and that you use in your
21 report?

22 A. What -- I don't know what you mean by do I
23 remember. Do I remember that it was the S&P index? I
24 remember it's the one that's used in the Ascend
25 quarterly report, and that is the index that was used

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1 for this comparison because that's what the IPS 10:11:27
2 indicated.

3 Q. Okay.

4 Is the only reason that you used the S&P index that
5 you described in paragraph 31-B because it was disclosed
6 in the "Investment Policy Statement"?

7 MR. BERIN: Object to form.

8 THE WITNESS: Well, I guess I have to repeat what I
9 said before. What I said before was that that was the
10 primary reason we used it, but I also said that that is
11 a very normal index to use as a benchmark, and therefore 10:11:55
12 it strikes me as the appropriate benchmark to use. But
13 it was specified in the IPS, and that was the driving
14 criteria.

15 MR. BLUMENFELD:

16 Q. So in paragraph 31-B you're describing the S&P
17 index for target date funds; correct?

18 A. Yes.

19 Q. How prevalent is the S&P target date index for
20 evaluating target date funds? 10:12:28

21 A. I've seen it many times.

22 Q. Okay.

23 Can you identify any plans that have used it?

24 A. Well, I guess I'm going to say Genworth because
25 I believe they used it.

1 Q. Okay.

2 Any others?

3 A. Not off the top of my head, no.

4 Q. Am I right, Mr. Marin, that the criteria you 10:13:08

5 articulate in 31-B of your report doesn't depend on

6 whether a fund underperforms the benchmark by one basis

7 point or a hundred basis points or a thousand basis

8 points, they all constitute a failure?

9 A. The IPS in Quanta does not quantify a threshold 10:13:30

10 amount. Other plan IPSes do. In this case they don't,

11 so it would certainly be in the qualitative factors that

12 one would evaluate when looking at these reports to see

13 the magnitude. But the more quantitative aspect of this 10:13:52

14 is just to see if it breached the levels by failing to

15 equal or exceed the benchmark level, so a negative

16 number, whether it was one basis point or a hundred

17 basis points, would get recorded, and it would be shown

18 as a negative number. It certainly is reasonable and

19 expected that when you're evaluating that that if it

20 was -- if it underperformed by one basis point that may 10:14:29

21 not be considered material enough to warrant an action,

22 but that wasn't the case here.

23 Q. I'm sorry.

24 What wasn't the case here?

25 A. That it was that low.

1 Q. Okay.

2 Did you evaluate whether the difference in
3 performance between the Freedom Funds which charge fees
4 and the S&P target date index which didn't have fees was
5 based on the amount of the fees?

6 A. We did every analysis, net of fees as was 10:14:59
7 indicated in the IPS, and we used the numbers in the
8 quarterly reports provided by the consultant to do their
9 comparisons as provided to the committee, so we mimicked
10 the approach used by the consultant to do the
11 evaluation.

12 Q. The S&P target date index that you utilized and 10:15:26
13 that the consultant utilized doesn't account for fees
14 because there are no fees on the index; correct?

15 A. You know, I'd have to look and see the
16 specificities of the target date fund indices, but my
17 understanding was that it was a net of fees number,
18 whether fees were charged on the index or not.

19 Q. What's the basis for your understanding that 10:16:00
20 that was a net of fees number on the S&P target date
21 index?

22 A. The fact that my analyst team told me that was
23 the case, and the consultant used it to do the
24 comparison.

25 Q. Okay.

1 Who on your analyst team told you that that was the
2 case?

3 A. I have a team of people that work with me to do 10:16:27
4 the analytics underlying these reports.

5 Q. Right. I'm asking who.

6 A. Oh, there are several, but specifically
7 Julio -- I want to say Sanchomonte. It's an Italian
8 name.

9 Q. Is he an employee of SEDA?

10 A. Yes.

11 Q. Does that matter to your opinions whether the 10:17:00
12 S&P target date index that you utilized accounted for
13 fees or not?

14 A. It certainly matters, and we saw some reference
15 to that in the rebuttal that the opposing witness,
16 expert witness, provided us. So we did go back and
17 check all of our numbers to see whether or not they had
18 been done in conformity with with the IPS standards and 10:17:29
19 that they were indeed net of fees.

20 Q. Before we go on to paragraph 31-C, why don't we
21 go look at the "Investment Policy Statement."

22 MR. BLUMENFELD: Mat, can you upload that?

23 MR. MCKENNA: Yes. One moment.

24 MR. BLUMENFELD:

25 Q. Mr. Marin, we're going to switch in a minute to

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1 the "Investment Policy Statement." We've been going 10:17:59
2 over after hour.

3 Would you like to take a break now?

4 A. I'm fine doing whatever you and my attorney
5 prefer.

6 MR. BERIN: I'm more concerned about Mr. Marin's
7 comfort, so I'm happy to press on a bit longer.

8 MR. BLUMENFELD: Bonnie, you're okay?

9 THE REPORTER: Okay.

10 THE WITNESS: I guess I'm trying to figure out --
11 oh, there it is.

12 Is this Exhibit 002? 10:18:29

13 MR. BLUMENFELD:

14 Q. It is.

15 A. Okay. So I'm going to download this, and then
16 I've got to go find it. Okay. I think I've got it.
17 Okay. I have it in front of me.

18 Q. Great.

19 Mr. Marin you should have in front of you what's
20 been marked as Marin Deposition Exhibit 2; correct?

21 A. Correct.

22 Q. And this is the October 2015 "Investment Policy 10:18:57
23 Statement" from Quanta?

24 A. Correct.

25 Q. It's the "Investment Policy Statement" you just

1 referred to and that you utilized in preparing your
2 report?

3 A. Yes.

4 Q. Can you go to -- It's page, I believe, 13 of 18
5 of the PDF. Sorry. I was mistaken. It's page 14 of 18 10:19:30
6 of the PDF.

7 A. Is this the one that says "Investment
8 Objectives, Criteria for Review and Review Processes,
9 Investment Watch List Process"?

10 Q. That's the one.

11 A. Okay. I have it up.

12 Q. And this is the provision you were talking
13 about in the IPS that describes when an investment would
14 be placed on the watch list; correct? 10:19:57

15 A. Correct.

16 Q. And I want to be clear. So if you can go back
17 to paragraph 31-B of your report, you say that a suite
18 is flagged and placed on watch for greater scrutiny.

19 That's in conformity with the "Investment Policy
20 Statement"; correct?

21 A. Yes.

22 Q. Okay.

23 Now, so first am I correct that you evaluated the
24 "Investment Policy Statement" and determined that the
25 criteria that's articulated in it are reasonable

Page 59

1 criteria?

2 MR. BERIN: Object to the form.

10:20:30

3 THE WITNESS: I have no reason to find them
4 unreasonable.

5 MR. BLUMENFELD:

6 Q. Okay. Thank you.

7 So can you point to me the criteria that talked
8 about performance against a benchmark as being criteria
9 for putting a fund on the watch list?

10 A. Okay. Well, let's take a quick look here. I
11 can't just look at this one slide. I have to look back
12 at the quantitative factors.

10:20:55

13 So on page -- Let's see what number is that page,
14 11 -- "Competitive and Consistent Performance Measured
15 Against the Appropriate Benchmark."

10:21:29

16 Q. Mr. Marin, let me just pause you for a minute.
17 If you want to read something to yourself, that's fine.
18 If you want to read something out loud, that's okay, but
19 just direct us to the right page number so we can follow
20 along.

21 A. That's why I said page 11.

22 Q. Is that internal page 11?

23 A. No. It's 11-18.

24 Q. Okay.

25 That's under the heading "Selection of Investment

1 Options"; correct?

2 A. Correct. This lists the quantitative factors, 10:21:58
3 "Based on the investment's --" the second bullet point,
4 "Based on the investment's objective, investment style,
5 growth versus value, and market capitalization, large
6 market versus small market, an appropriate benchmark
7 should be used for relative investment performance
8 evaluation. A list of the benchmarks to be used for the
9 comparison to the plan's investment options may be found
10 in Appendix A."

11 Q. This page, sir, is the page about describing
12 how they select investment options; correct? 10:22:27

13 A. That is correct.

14 Q. Okay.

15 A. But I consider that relevant to monitoring as
16 well --

17 Q. Okay.

18 A. -- because this is the only place -- I mean, we
19 can all sort of question why Ascend chose to organize
20 its IPS the way it did, but they have the listing of the
21 qualitative and quantitative factors on pages 11 and 12
22 of 18 are shown under "Selection," and then page 13 says 10:22:59
23 "Performance Evaluation Criteria" and then the watch
24 list.

25 So if we look at "Performance Evaluation Criteria,"

1 that certainly could apply to both selection and
2 monitoring since monitoring has everything to do with
3 the performance evaluation criteria.

4 So let's see. I guess I'm losing sight of your 10:23:28
5 question. Why don't you give me your question again.

6 Q. My question, sir, was, you describe in
7 paragraph 31-B of your report that a fund should be
8 placed on watch for greater scrutiny if it underperforms
9 the S&P target date index benchmark on a three-year or
10 five-year basis.

11 My question, sir, was, where in the IPS does it say
12 that a fund is supposed to be placed on watch list if 10:23:57
13 that happens?

14 A. Okay. Very good. Let's see. Okay. So
15 under -- on page 13, third paragraph down, it talks
16 about the way in which performance is measured and that
17 the performance will be measured net of fees. 10:24:27

18 And then we move up to the next page, it says that
19 the "option's net performance falls below the median of
20 its peer group's three, five. Adjusted Alpha falls
21 below the peer group's median. The information
22 ratio --" which is indeed a comparison against the
23 benchmark, so "consistency of performance as measured by 10:24:59
24 the fund's information ratio is negative as measured on
25 a three-, five-, and ten-year basis."

1 So effectively the capturing of the benchmark
2 analysis takes place in the third bullet point of
3 page 14 of 18.

4 Q. Is that it?

5 A. Yes, I believe so.

6 Q. Okay. Thank you.

10:25:29

7 Now let's go back to your report.

8 A. Correct.

9 Q. Do you have that in front of you?

10 A. I do.

11 Q. Paragraph 31-C is where you describe the test
12 related to the information ratio; correct?

13 A. Correct.

14 Q. So are you saying that 31-B and 31-C are
15 essentially the same thing?

16 A. They're not entirely the same. There's a
17 slight difference. The information ratio tracks the
18 differential in the fund's performance against the
19 benchmark as referenced by the tracking error, so it
20 looks at effectively active risk, but the tracking
21 against the benchmark, which is what's covered in "B,"
22 is a subset, if you will, of what happens in "C."

10:25:57

10:26:28

23 Q. Okay.

24 So what you describe in paragraph 31-B isn't
25 actually called for in the "Investment Policy Statement"

1 at all when it comes to the watch list criteria;
2 correct?

3 A. I believe it is called for, yes.

4 Q. Okay.

5 Let's go back to the paragraph we just looked at or
6 the page we just looked at in the "Investment Policy
7 Statement." You said it was in the bullet point under
8 the information ratio. 10:26:56

9 A. Well, you can't calculate the information ratio
10 without doing the comparison of the fund performance
11 against the benchmark. So like I said, "B" is a subset;
12 of what has to be done for the calculation of the
13 information ratio, and it is therefore implied in this
14 watch list process that one needs to do the relative
15 tracking of the performance against the benchmark. 10:27:29

16 Q. Okay.

17 What if a fund passed the criteria that you
18 described in paragraph 31-C?

19 A. Well, that's a hypothetical, and I guess what I
20 would say is that is not what occurred here. The
21 information ratio produced results that were negative,
22 and they produced that negative result predominantly 10:27:59
23 because of the failure against the performance against
24 the benchmark.

25 Q. Okay.

1 Would you agree with me at least that the criteria
2 you described in paragraph 31-B is not expressly
3 included in the monitoring criteria that's set forth in
4 the "Investment Policy Statement"?

5 A. No. I would say it's -- it's absolutely 10:28:30
6 imbedded in what's shown as the watch list process.

7 My -- I am sure that if you -- if you asked any
8 investment professional is it normal to measure
9 performance against the benchmark and track
10 underperformance, my answer is yes. The best evidence
11 of that is that the quarterly reports from Ascend 10:28:58
12 displayed in exactly that way.

13 Q. You're changing your answer from the question
14 that I asked you, though, Mr. Marin. I'm talking about
15 the criteria that you say you relied upon from the
16 "Investment Policy Statement." If you want to say,
17 Mr. Marin, that you think it's appropriate to do because
18 it's what everybody does, that's fine, but you said you
19 think it's appropriate to do because it's in the
20 "Investment Policy Statement."

21 A. Yes. 10:29:27

22 MR. BERIN: Object to the form of the question.

23 THE WITNESS: And the reason I say it's in the
24 "Investment Policy Statement" is, as I said, the
25 "Investment Policy Statement" incorporates the

1 evaluation against the benchmark in the indication of
2 the use of the information ratio, and because they
3 mandate in this -- in this IPS that the investment 10:29:56
4 consultant is to track this, and the investment
5 consultant provides quarterly reports that specifically
6 track the performance against the benchmark, I think QED
7 that says quite clearly that the IPS is intended to say 10:30:23
8 that performance against the benchmark is to be
9 tracked.

10 MR. BLUMENFELD:

11 Q. You understand, Mr. Marin, there's a difference
12 between saying that performance against the benchmark
13 should be tracked and what you articulate in
14 paragraph 31-B, which is if you underperform the
15 benchmark on a three-year basis or a five-year basis the
16 fund is placed on watch; correct?

17 MR. BERIN: Object to the form.

18 THE WITNESS: I believe the IPS instructs the 10:30:57
19 committee and its consultants to do exactly what I say
20 in Section B.

21 MR. BLUMENFELD:

22 Q. Okay.

23 And that's based on the third bullet point in the
24 investment watch list process provision of the
25 "Investment Policy Statement"?

1 A. It's based on the entire "Investment Policy
2 Statement," which is why if read in its entirety it is 10:31:24
3 very clear that performance measurements and monitoring
4 against the benchmark, which is indeed the industry
5 norm, is called for.

6 Q. Paragraph 31-C of your report --

7 A. Yes.

8 Q. -- you say that if an investment has a negative 10:32:02
9 information ratio sign, it's supposed to be placed on
10 the watch list according to the "Investment Policy
11 Statement."

12 A. Well, let's just -- May I read it aloud?

13 Q. Paragraph 31-C?

14 A. Yes.

15 Q. If that's what you feel you need to do.

16 A. Well, you're characterizing 31-C. I'd rather 10:32:27
17 just read it, and then we can go with what it says. Is
18 that all right?

19 Q. Go ahead. Read it.

20 A. "Review of the Freedom Funds' information ratio
21 by vintage, such that when more than half of the
22 vintages with a sufficient performance history generated
23 a negative three- and/or five-year information ratio,
24 the suite is flagged and placed on watch for greater
25 scrutiny. The quality -- this quality, the information

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1 ratio bearing a negative sign, is recognized as a watch 10:32:59
2 list standard in the IPS."

3 So what was your question?

4 Q. I guess my next question is, can you identify
5 any plans that apply that criteria for putting a fund on
6 watch?

7 A. Yeah, this one.

8 Q. Any others?

9 A. I'm not focused on others at this moment in
10 time, so I can't tell you without having the IPSes of 10:33:28
11 other funds in front of me, which ones have it. I can
12 tell you that this one has it.

13 Q. Okay.

14 Now let's go back to the "Investment Policy
15 Statement."

16 A. Okay.

17 Q. You have it in front of you?

18 A. I do.

19 Q. Let's go back to the investment watch list
20 process.

21 A. Okay. That's 14 of 18.

22 Q. Page 14 of 18.

23 A. I've got it up.

24 Q. In the first paragraph there it says, "The 10:33:58
25 committee may place an investment option on a," quote,

1 "monitor," closed quote, "or," quote, "alert," closed
2 quote, "status and conduct a thorough review and
3 analysis of the investment option."

4 Did I read that correctly?

5 A. Yes.

6 Q. The next sentence says, "The committee may
7 consider the following criteria when placing a fund on
8 monitor or alert status"; correct?

9 A. Correct.

10 Q. It doesn't say that a fund is automatically 10:34:26
11 placed on monitor or alert status or subject to watch if
12 it hits on any of these criteria; correct?

13 A. That's correct.

14 Q. Okay.

15 And how many criteria are listed on this page?

16 A. Three, four, five -- nine.

17 Q. Okay.

18 How many did you evaluate in your report?

19 A. All nine.

20 Q. You evaluated all nine?

21 A. I evaluated all nine to prepare my report, yes.

22 Q. Do you discuss all nine of them in your report? 10:34:59

23 A. No, because some of them I either didn't come
24 up as breaches, or there wasn't enough information to
25 determine if there was a breach.

1 Q. So the fourth bullet point down on the
2 monitoring criteria says, "There is a change in the
3 professionals managing the portfolio."

4 A. That's correct.

5 Q. You don't discuss that in your report at all?

6 A. I look at that information as part of the 10:35:28
7 review process, but I don't discuss it, no.

8 Q. Okay.

9 And you didn't conclude that there were any issues
10 with respect to the Fidelity Freedom Funds and the
11 change in the professionals managing the portfolio;
12 correct?

13 A. I don't discuss it, but I would have been aware
14 that that had occurred if it had come up. For instance,
15 when we did the review of alternative funds for 10:35:59
16 replacement, we had on our matrix information about how
17 long the managers had been running those funds. It was
18 also something that is visible on the deep dive reports
19 that were provided by Ascend to the committee, so that's
20 all an element or criteria that I was aware of when we 10:36:26
21 were evaluating this issue to put it on monitor or
22 alert.

23 Q. And you don't identify in your materials
24 considered any information about you looking at changes
25 in the professionals managing the portfolio for the

1 Fidelity Freedom Funds aside from the target date deep
2 dives that the Quanta plan fiduciaries received;
3 correct?

4 A. I identify all of the relevant materials that 10:36:57
5 we used. The only exception to that is that when you
6 review Morningstar data you're looking at a lot of data,
7 but again, it's all consistent. I would have been aware
8 had there been incremental breach due to a change of
9 portfolio manager, and none of them appear to have
10 happened with regard to the Fidelity Freedom Funds.

11 Q. And just so I understand -- meaning, you looked 10:37:27
12 at all nine criteria when you evaluated the Fidelity
13 Freedom Funds, and six of those criteria did not leave
14 you to conclude that there was any reason to put the
15 Fidelity Freedom Funds on a watch list, but three of
16 them did?

17 A. The ones that I viewed as in breach were
18 included in the report. The ones that I didn't view or
19 I didn't have any information to indicate there was a 10:37:58
20 breach were not put into that.

21 Q. You understand that the "Investment Policy
22 Statement" doesn't say if any of these happen the fund
23 should be placed on watch but says the committee is
24 supposed to consider all of these; correct?

25 MR. BERIN: Object to the form.

1 THE WITNESS: Considering them is exactly the way I
2 approached the exercise.

3 MR. BLUMENFELD:

4 Q. And you think it's reasonable to consider all
5 nine of these factors when you're evaluating investment
6 options like the Fidelity Freedom Funds and the Quanta 10:38:28
7 401K plan?

8 MR. BERIN: Object to the form.

9 THE WITNESS: Well, the way I would answer that is
10 to use the very one that you highlight, a change in the
11 professional managing the portfolio. That's a sort of a
12 one-way binary issue. If there was a change in
13 professionals, that might have been flagged as an issue.
14 If there wasn't, it wasn't flagged as an issue.

15 So if I didn't see any flags on six of these, and I 10:38:59
16 did on three of them, my view is those three, which
17 happen to be the first three, which happen to be the
18 first three on the list, not that it specifies that
19 those are in rank order of importance, but it's
20 certainly implied that they are in rank order of
21 importance because the quantitative ones listed first,
22 just like the quantitative are listed first in the IPS, 10:39:27
23 those are pretty darn important. And from my experience
24 and history in this industry, those are the ones that
25 cannot be ignored if they're breached.

1 Q. You're not offering the opinion in your report
2 that the Quanta plan fiduciaries were ignoring any of
3 these criteria, are you?

4 A. I am not, no.

5 Q. Okay.

6 Let's go to the fifth one down. The fifth criteria
7 says, "There is a significant decrease in the investment 10:39:57
8 options. Assets for the investment options have not had
9 at least 75 million under management."

10 Do you see that?

11 A. Yes.

12 Q. And that again was a criteria that was in the
13 "Investment Policy Statement" but that did not give you
14 any cause for concern with respect to the Fidelity
15 Freedom Funds; correct?

16 MR. BERIN: Object to form.

17 THE WITNESS: Correct.

18 MR. BLUMENFELD:

19 Q. Okay.

20 The next one down is, "There is an indication that
21 the investment manager of the funds is deviating from
22 that manager's stated style and/or strategy." 10:40:27

23 Did I read that correctly?

24 A. You did.

25 Q. Okay.

1 And that's a criteria that you considered in
2 evaluating the Fidelity Freedom Funds and concluded
3 there was no basis for saying that that would be a
4 reason for concern with respect to the Fidelity Freedom
5 Funds?

6 A. Well, I knew there had been some deviation in
7 the style. My sense from what we saw in the context the
8 several years prior to the referenced period was that
9 there were adjustments being made to the -- to the 10:41:00
10 investment strategy that were reflective of overall
11 changes in the market but not anything that would cause
12 a particular, let's say, negative red flag.

13 Q. Okay.

14 Next one down is, "There is a significant increase
15 in expense ratio," slash, "fees of the investment
16 option, and the expense ratio falls into the bottom 10:41:27
17 half," open parentheses, "most expensive of the peer
18 group."

19 Did I read that correctly?

20 A. You did.

21 Q. And that's a criteria that's part of the watch
22 list process for Quanta and that you looked at but
23 concluded did not give you any concern with respect to
24 the Fidelity Freedom funds?

25 A. No, because I didn't view the fee levels as

1 dramatically different than the industry norm, and since
2 the evaluations were being done net of fees, I have
3 indeed lower concern about that.

10:42:00

4 Q. Okay.

5 The next one that's described here is "an
6 extraordinary event that interferes with the investment
7 option's ability to fulfill its role into the future."

8 Do you see that?

9 A. Yes.

10 Q. And again, that's something you looked at in
11 connection with evaluating the Fidelity Freedom Funds
12 and concluded that was not a reason to put the funds on
13 watch or monitor or alert status?

10:42:27

14 A. That's correct.

15 Q. And the last one is, "There's instability of
16 the organization managing the investment option"?

17 A. Yes.

18 Q. And again, you looked at that in connection
19 with your report and concluded there was no basis using
20 that criteria for any cause or concern with respect to
21 the Fidelity Freedom Funds?

22 A. That's correct.

23 Q. Okay.

24 Let's go to the first one on the "Investment Policy
25 Statement" which talks about an "investment option's net

1 performance falls below the median of its peer groups
2 three-, five-, or ten-year cumulative returns."

3 Do you see that?

4 A. Yes.

5 Q. You testified earlier that you utilized the S&P
6 index for evaluating the performance of the Freedom
7 Funds because that's what Quanta was using.

10:43:29

8 Do you remember that?

9 A. I said that's what Quanta testifies in their
10 Appendix A of the IPS, and that's what Ascend uses in
11 their quarterly reports provided to the committee.

12 Q. You know that when Ascend prepared reports on
13 the performance of the Fidelity Freedom Funds, Ascend
14 provided to Quanta performance against the Lipper peer
15 group; correct?

16 A. I am aware of that, yes.

10:43:59

17 Q. You didn't use the Lipper peer group when
18 evaluating the performance against peer groups; correct?

19 A. That is correct.

20 Q. Did you look at the Lipper peer groups when you
21 were preparing your report?

22 A. I looked at it. We did not have the
23 specificity available to us of how they constituted
24 their peer group, but we looked at it, yes.

25 Q. And you've heard of Lipper before?

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1 A. Yes.

2 Q. You've used Lipper peer groups in connection 10:44:30
3 with other work that you've done with respect to
4 investment monitoring?

5 A. Yes.

6 (Pause in the proceedings.)

7 MR. BLUMENFELD:

8 Q. In preparing your report, Mr. Marin, did you
9 consider any other benchmarks for the Fidelity Freedom
10 Funds aside from the S&P target date index?

11 A. Those were the only ones we used.

12 Q. I know those were the only ones you used. I
13 was asking if you considered any others.

14 A. We didn't feel it was appropriate given that 10:45:58
15 they specified the benchmark.

16 Q. And you just said "we," and you've done that a
17 few times. I just want to make sure.

18 This is your report, and these are your opinions;
19 correct?

20 A. This is 100 percent my report and 100 percent
21 my opinion. I have a team of two or three analysts who
22 did a lot of data gathering as you noted, or as you may 10:46:26
23 have noticed in my report there was some 150 pages of
24 numerical exhibits. That's, given my billing hour cost,
25 the cost effective way to do that is to have our

1 analysts on our team see that experts do the data
2 gathering from Morningstar, Lipper, or whatever sources,
3 Bloomberg or whatever is available, to put them into the
4 analytical frameworks that I indicate, and then they and 10:47:00
5 I go over them and evaluate them. That's why I use the
6 word "we."

7 Q. I don't have a problem obviously with you using
8 people to help support you in your opinions. I just
9 want to make sure that when you say "we," you're talking
10 about your personal opinions as an expert that
11 Plaintiffs are bringing to the court in connection with
12 this case, not somebody else's conclusions but yours.

13 A. 100 percent my own opinions. I read the 10:47:29
14 evidence in the case. I formulate the opinions. I
15 generate and write all of my own reports. What I use my
16 support team for are two things, to help me with some of
17 the specificity of the citations. I do many of the 10:47:58
18 citations myself, but sometimes I have them do the
19 legwork to finalize the citations. I have them do
20 specific research for me if there's research called for.
21 I do have them do data gathering, and I have them do the
22 data analysis work to generate the data that is used to
23 formulate the opinions. I formulate the opinions, and I
24 write the reports. 10:48:29

25 Q. You wrote a rebuttal report to Dr. Wermers'

1 report; correct?

2 A. I did.

3 Q. Okay.

4 You saw in Dr. Wermers' report that he compared the
5 Fidelity Freedom's performance to three different
6 indices?

7 A. I did.

8 Q. You don't disagree with any of his conclusions
9 in his report about those three different indices;
10 correct?

11 A. I disagree.

12 MR. BERIN: Object to form.

13 THE WITNESS: I emphasized the IPS and the stated
14 benchmark that's called for in the IPS. Generally 10:49:00
15 that's my -- one of my two big concerns about
16 Dr. Wermers' report, that he did not comply with what
17 the IPS says that he should have complied with.

18 MR. BLUMENFELD:

19 Q. And you think it's important to comply with the
20 IPS?

21 A. I do.

22 Q. Separate and apart from the IPS portion of it,
23 though, you didn't disagree with his conclusions based
24 on comparing the performance of the Fidelity Freedom
25 Funds to the Morningstar US category average or the 10:49:29

1 Morningstar lifetime moderate index or the S&P target
2 date index?

3 A. I didn't comment about it because to me that is
4 a secondary approach. And there's no harm in doing
5 that, but the information that is most relevant to
6 deciding whether to retain or terminate a fund choice is
7 based on what is indicated in the IPS, in my opinion. 10:49:59

8 Q. Got it.

9 And you think -- okay. Let's do this.

10 MR. BLUMENFELD: Mat, can you add Dr. Wermers'
11 report?

12 MR. McKENNA: Yes. One moment.

13 THE WITNESS: You want me to reference it?

14 MR. BLUMENFELD:

15 Q. Yes. And it will take a moment to upload it.
16 Technology is fast but not as fast as we would all like
17 it.

18 MR. BLUMENFELD: And you'll have to refresh that
19 folder.

20 MR. McKENNA: Yeah. I see that.

21 THE WITNESS: I have it. So I'm going to download 10:50:47
22 it and close this one and pull that one up. Okay. I
23 have it in front of me. I'm getting pretty good at
24 this.

25 MR. BLUMENFELD:

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1 Q. All right.

2 A. The technology that is.

3 Q. I'm glad that it's working, and we're not

4 having any hiccups. That happens sometimes.

10:51:25

5 You have it in front of you?

6 A. I do.

7 Q. Could you turn to -- I'll give you the PDF page

8 number. It's 179 of 200.

9 A. He's prolific, isn't he? Let's see here.

10 Those page numbers are on the appendix, I believe. You

10:51:55

11 said page 179?

12 Q. Yes.

13 A. Okay. I'm sorry. I flipped too far forward

14 into the appendices. Oh, you mean 179 out of 200?

15 Q. Yes. I think that's what I said, but --

16 A. Oh, I'm sorry. I was looking for page numbers.

17 179. Okay. Hold on. I'm getting there. 177, 178,

10:52:30

18 179. Is this the one that says "Fidelity Freedom Funds

19 versus S&P target date TDFs, Morningstar moderate TDFs

20 and Morningstar US category average 5-year rolling

21 return"?

22 Q. September 30, 2016 to March 31, 2021?

23 A. Yes.

10:53:00

24 Q. You have it in front of you? Great. I would

25 like you to just focus on the December 31, 2016 date

1 which is the second one in from the left.

2 A. Second column, got it.

3 Q. Yes.

4 And just to orient ourselves, your conclusion is
5 that as of the December 31, 2016, the Fidelity Freedom
6 Funds failed the removal criteria and should be removed
7 as investment options from the plan; correct?

8 A. Yes.

9 Q. And Dr. Wermers concludes that as of that date, 10:53:29
10 seven of the 12 Freedom funds outperformed the
11 Morningstar lifetime moderate index, five of 12
12 outperformed the S&P target date index, and 11 of 12
13 outperformed the Morningstar US category average;
14 correct?

15 A. That's what he indicates.

16 Q. And what I want to make clear is, you don't
17 disagree with his conclusions about those? 10:53:57

18 A. Well, may I reference my report just because I
19 can sort of triangulate the S&P target date number
20 against this?

21 Q. Sure.

22 A. We're looking at the last quarter. Let me just
23 make sure that there's the numbers. And this is the 10:54:23
24 five year, is it not?

25 Q. I believe that page is five years.

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1 A. Yeah. So what -- This is out of 12. I would
2 show that 83 percent of the -- of the -- of the 10:54:46
3 individual funds, 83 percent of them or one, two, three,
4 four, five, six, seven, eight, nine, ten -- one, two --
5 I -- instead -- He shows five out of 12. I would show
6 ten out of 12. 10:55:30

7 Q. On the S&P target date?

8 A. On the S&P target date index.

9 Q. Do you think that's because you're using a
10 different S&P target date index than he would be using?

11 A. I would have to assume so because I used the
12 ones provided in the Ascend quarterly reports, and he
13 may have taken his from another source.

14 Q. And with respect to the Morningstar lifetime
15 moderate index, you don't offer any opinion about that 10:55:57
16 at all; correct?

17 A. No, I don't.

18 Q. So you don't disagree with his conclusion with
19 respect to the Morningstar lifetime moderate index?

20 A. I have no way of agreeing or disagreeing
21 because I didn't look at the Morningstar lifetime
22 moderate or the US category average. So in the same way
23 that five out of 12 does not comport with what I'm
24 showing on my report, which is ten out of 12 that fail,
25 I have no way of knowing whether or not 11 of 12 or 10:56:27

1 seven of 12 are the correct indications because I did
2 not independently gather this data. I do not have a
3 team of people that looked at that data and verified it,
4 so I can't speak to whether his report is right or not.
5 I can only speak to the one issue which I can verify
6 which I have is which is that it's wrong, which is the
7 S&P target date.

8 Q. And you didn't look at the Morningstar lifetime 10:56:59
9 moderate or US category benchmarks, so you don't have a
10 basis for agreeing with him or disagreeing with him?

11 A. That's correct.

12 Q. So can you go to page 174 out of 200?

13 A. This is the three-year --

14 Q. It is.

15 A. -- period and the same basic analysis. Should 10:57:26
16 I be looking at the same column?

17 Q. You should.

18 A. And this is one that said six out of 12 for the
19 S&P target date?

20 Q. Correct.

21 A. And I would say that 100 percent or 12 of 12
22 fail.

23 Q. And with respect to the Morningstar lifetime
24 moderate?

25 A. I have the same opinion that I mentioned with

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1 five-year. I didn't look at those, so I have no way of 10:57:59
2 knowing if they're right or wrong.

3 Q. Dr. Wermers concluded that 12 out of 12
4 outperformed the Morningstar lifetime moderate index,
5 and 12 out of 12 outperformed the Morningstar US
6 category average, and you don't have a basis for
7 agreeing with that or disagreeing with that?

8 A. No, I don't. The only basis I have is the
9 fundamental basis that I described with the five-year,
10 which is that if my results, which are consistent with 10:58:29
11 what the consultant provided the committee which are
12 dramatically different what he has from the S&P target
13 date, from a confidence level that undermines my
14 confidence in his analysis in general because that's a
15 fairly big breach of the most important number on this
16 page, which is the indicated benchmark in the IPS, the
17 S&P target date. 10:58:59

18 Q. Mr. Marin, if you wanted to, you had his
19 report, and you could have done the analysis on the
20 Morningstar lifetime moderate or Morningstar US category
21 average indices if you believed there was information
22 that could shed light on that would be helpful; correct?

23 A. I considered it largely irrelevant to the issue
24 at hand.

25 Q. Got it.

1 He mentions several times the "Investment Policy
2 Statement" and the materials that Ascend was providing
3 to the committee; correct?

4 A. Correct.

5 MR. BLUMENFELD: Mat, why don't we add the Q4, 2016
6 quarterly investment review.

7 MR. BERIN: Jeremy, I don't want to interrupt. If
8 there is a good stopping point, we've been going about 10:59:58
9 two hours. It would be nice to take a short break.

10 MR. BLUMENFELD: Why don't we do that now.

11 MR. BERIN: Sorry.

12 THE VIDEOGRAPHER: We are going off the record.
13 The time is 11:00 o'clock.

14 (A recess is taken.)

15 THE VIDEOGRAPHER: We are back on the record. The
16 time is 11:13.

17 MR. BLUMENFELD:

18 Q. Mr. Marin, can you pull up the "Investment
19 Policy Statement"? It should be Exhibit 2 to your 11:13:22
20 deposition.

21 A. Got it.

22 Q. Specifically page 14 of 18 that we've been
23 talking about before.

24 A. Hold on. Watch list process. Got it.

25 Q. Okay.

1 The second sentence there says, "The committee may
2 consider the following criteria when placing a fund on,"
3 quote, "monitor," closed quote," or, "quote," alert," 11:13:57
4 closed quote, "status"; correct?

5 A. Yes.

6 Q. And in paragraph 31 of your report you changed
7 the "may consider the following criteria" to essentially
8 "The committee will place a fund on monitor or alert
9 status if any of the following happen"; correct?

10 MR. BERIN: Object to the form.

11 THE WITNESS: Well, let me see. Can you reference
12 exactly in "31" where I say that?

13 MR. BLUMENFELD:

14 Q. Sure in "31-B," in "31-C," in "31-D."

15 A. So let's just take "31-B."

16 Q. You say at the end of "31-B, the suite is
17 flagged and placed on watch for greater scrutiny."

18 A. Yes. That is what I did. I don't think I 11:14:58
19 specifically said that that's what the IPS says. I just
20 said that's what we did based on what the IPS indicated.

21 Q. Okay.

22 But in practical terms, you turned the sentence
23 that says, "The committee may consider the following
24 criteria when placing a fund on monitor or alert status"
25 into "The fund will be placed on monitor or alert status 11:15:26

1 if any of the following happen."

2 MR. BERIN: Object to the form.

3 THE WITNESS: Yeah. I'm not in the business of
4 rewriting their IPS form. Okay? So I was not
5 attempting to do anything to change what the IPS said.

6 The IPS says these are the criteria that they may
7 consider. And of course the idea is that they're
8 establishing a process for monitoring and review and 11:15:59
9 removal if necessary, and it is normal and standard
10 industry practice to do that based on the criteria
11 indicated in the IPS.

12 So that is the approach that I used. The IPS
13 provides the guidance. I am supposed to do the
14 analysis. I did the analysis based on that guidance of
15 the IPS. To me it's very clear what should be 11:16:28
16 considered. We considered it. We then flagged it. And
17 I had the benefit also of looking at the reports that
18 were provided by their consultant, and I don't believe
19 anything that I did was inconsistent with what they did
20 other than my choice of peer groups.

21 Q. We'll get to the peer group choice in just a 11:16:57
22 minute.

23 But in paragraph 31-B you say, "The suite is
24 flagged and placed on watch for greater scrutiny."

25 But the IPS doesn't call for that. It says that's

1 a factor for the plan fiduciaries to consider.

2 MR. BERIN: Object to the form.

3 THE WITNESS: Like I said, paragraph B does not say
4 that the IPS says that. Paragraph B says that. I then
5 flagged it and placed it on watch for greater scrutiny 11:17:29
6 in my analysis.

7 MR. BLUMENFELD:

8 Q. Okay.

9 And paragraph 31-C does the same thing with respect
10 to the information ratio?

11 A. Yes.

12 MR. BERIN: Object to the form.

13 MR. BLUMENFELD:

14 Q. And in paragraph 31-C you're not relying on the
15 IPS to articulate the criteria for putting a fund on
16 watch list?

17 MR. BERIN: Object to the form.

18 THE WITNESS: Well, let's see. This quality is
19 recognized as a watch list standard in the IPS. The 11:17:58
20 suite flagged and placed on watch, yes. My same comment
21 for "B" pertains to "C."

22 MR. BLUMENFELD:

23 Q. The IPS says that it's something that can be
24 considered, and you said that's something that has to be
25 flagged for placement on watch?

1 MR. BERIN: Object to the form.

2 THE WITNESS: I'm saying that the IPS does not put
3 these things up on its process list for them to be 11:18:26
4 ignored. They need to be considered. It's industry
5 standard that they be considered. There's a number of
6 things that I've cited in my report that address the
7 fact that that's how they should be considered, and
8 that's how I considered them.

9 So I'm not quibbling that the IPS says "may
10 consider," but to me the implications of the IPS, given 11:19:00
11 its mandate, self-imposed mandate, is to consider those
12 issues and to take the actions of putting them on a
13 flagged or monitor basis or alert basis depending on the
14 outcome of that review.

15 Q. Do you agree that the investment watch list
16 process that's described in the "Investment Policy
17 Statement" for Quanta is pretty typical of "Investment
18 Policy Statement"s for defined contribution plans? 11:19:30

19 A. It's reasonably typical in the sense that I
20 mean the wording is different because different
21 consultants word these things a little differently, but
22 it's fairly typical in that it considers the
23 quantitative and the qualitative aspects that need to be
24 monitored and reviewed by the committee to evaluate the
25 ongoing appropriateness of these funds. 11:19:57

1 Q. Great. Let's go to Exhibit 4 to your
2 deposition. It should be in the folder.

3 A. Okay. Let's see here. Exhibit 4. Okay. I
4 see it there. I'm downloading it. It's downloading.
5 It's Exhibit 4. I got to get out of this one. 11:20:30
6 Exhibit 4. Okay. This is the 4th quarter report by
7 Ascend as provided to the committee; is that correct?

8 Q. That is what it is, and this is a document you
9 considered in preparing your report; correct?

10 A. Yes.

11 MR. BLUMENFELD: Okay. Alec, were you able to 11:21:03
12 download it?

13 MR. BERIN: I'm still working on it.

14 MR. BLUMENFELD: Okay.

15 MR. BERIN: I appreciate you asking.

16 MR. BLUMENFELD: Sure. We'll give you a minute.

17 MR. BERIN: Thank you. I just got it.

18 MR. BLUMENFELD: Okay. Great.

19 Q. Mr. Marin, could you turn to page 50 of 68? 11:21:20
20 That's of the PDF pages.

21 A. Is this the one that shows "Fidelity Freedom K
22 2005"?

23 Q. That's the one.

24 A. Okay.

25 Q. And this is information that would have been

1 provided to the committee about the performance of the
2 Fidelity Freedom K 2005 Fund as of the time period that 11:21:57
3 you say the fund should have been removed from the plan;
4 correct?

5 A. That's correct.

6 Q. Okay.

7 Could you look at "Manager Versus Benchmark
8 Performance," that sort of table that's in the middle of
9 the page?

10 A. Yes.

11 Q. Can you see right underneath there it shows
12 "Product name, Fidelity Freedom K 2005"?

13 A. I'm just going to enlarge it here a little bit.

14 "Product name, Fidelity Freedom K 2005," yes. 11:22:26

15 Q. And also has the "S&P Target Date Retirement
16 Income."

17 You see that?

18 A. Yes.

19 Q. And that's the benchmark; correct?

20 A. Yes.

21 Q. Okay.

22 If you look at three-year performance, just to
23 orient you and me, the Fidelity Freedom Fund K 2005 has
24 three-year performance of 3.41 percent; correct?

25 A. 3.41, correct.

1 Q. Okay.

2 Immediately to the right of that it shows the rank? 11:22:58

3 A. It shows the Rank 32.

4 Q. Yes.

5 Meaning that the Fidelity Freedom K Fund 2005 was
6 in the top 32nd percentile, essentially the top third of
7 all target date 2005 funds; correct?

8 A. Correct.

9 Q. Okay.

10 It also shows the ranking of the S&P Target Date
11 Retirement Income Fund; correct?

12 A. Yes.

13 Q. And it shows that that fund was ranked in the 11:23:29
14 top 28th?

15 A. Correct.

16 Q. On a three-year basis?

17 A. Yes.

18 Q. Meaning that the S&P Target Date Fund benchmark
19 outperformed 72 percent of target date funds?

20 A. Yes.

21 Q. Okay.

22 Then on a five-year basis it shows the Fidelity
23 Freedom Fund was ranked on the 75th percentile; correct? 11:24:00

24 A. Yes.

25 Q. Meaning that particular fund performed better

1 than about 25 percent of other target date funds?

2 A. That's correct.

3 Q. And the S&P Target Date benchmark for that was
4 in the 85th percentile; correct?

5 A. That's correct, meaning --

6 Q. Meaning that vintage of the benchmark was in
7 the bottom 15 percent of target date funds?

11:24:26

8 A. That's correct.

9 Q. Okay.

10 Now, let's go to the Fidelity Freedom K 2010, next
11 page.

12 Do you have that in front of you?

13 A. I do.

14 Q. So as of December 31 of 2016, the committee
15 would have received this information about the Fidelity
16 Freedom K 2010 fund?

17 A. That's correct.

18 Q. And this would have shown -- and this shows the 11:24:56
19 Fidelity Freedom K 2010 Fund was ranked in the top 14
20 percent target date vintages that were 2010 vintages;
21 correct?

22 A. It shows the rank as 14, and it shows the rank
23 as 11 for the target date.

24 Q. For the S&P target date benchmark. Let's break
25 those down so the record clear.

1 The Fidelity Freedom K 2010 Fund was ranked in the 11:25:28
2 top 14 of target date funds according to Lipper;
3 correct?

4 A. Yes.

5 Q. Okay.

6 Meaning it was a better performer than about 86
7 percent of other target date 2010 funds?

8 A. Yes.

9 Q. And the S&P Target Date Index that is the
10 benchmark that you utilized was ranked in the 11th
11 percentile; correct? 11:25:59

12 A. Correct.

13 Q. Meaning the S&P Target Date Index outperformed
14 89 percent of target date funds?

15 A. Correct.

16 Q. Okay.

17 And on a five-year basis, the Fidelity Freedom K
18 2010 fund was in the top 26th percentile?

19 A. Yes.

20 Q. Meaning it out performed 74 percent of target
21 date funds?

22 A. Yes.

23 Q. And on a five-year basis, the S&P Target Date
24 Index was in the 52nd percentile? 11:26:28

25 A. Correct.

1 Q. Meaning that it outperformed 48 percent of
2 other target date funds as of that time period?

3 A. Correct.

4 Q. Okay.

5 Let's go to the 2015, next page, which is page 52
6 of 68.

7 A. Okay.

8 Q. So this shows from Quanta's consultant to the
9 folks on the Quanta committee that the Fidelity Freedom 11:26:58
10 K 2015 Fund was ranked in the top 17 percent of target
11 date funds that were 2015 target date funds; correct?

12 A. Yes.

13 Q. On a three-year basis?

14 A. Yes.

15 Q. Okay.

16 And the S&P Target Date Index for 2015 was ranked
17 in the top 5 percent?

18 A. Yes.

19 Q. That means that 95 percent of target date funds
20 would have performed worse than the S&P Target Date 2015 11:27:27
21 Index; correct?

22 A. Correct.

23 Q. Okay.

24 Let's switch to the five-year.

25 The 2015 fund on a five-year basis was ranked in

1 the top 41st percentile; correct?

2 A. Correct.

3 Q. Meaning it outperformed 59 percent of target
4 date funds?

5 A. Correct.

6 Q. And the benchmark of the 2015 fund outperformed
7 65 percent of target date funds?

8 A. Correct.

9 Q. Let's go to the next one, 2020. 11:28:00

10 The Quanta consultant provided to Quanta
11 information that the fiduciaries would have been aware
12 of as of December 31 or shortly thereafter December 31,
13 2016 or shortly thereafter this information about the
14 Fidelity Freedom K 2020 Fund; correct?

15 A. Correct.

16 Q. And this shows the Fidelity Freedom K 2020 fund 11:28:26
17 on a three-year basis was ranked 7th; correct?

18 A. Correct.

19 Q. Meaning the Fidelity Freedom K 2020 fund
20 outperformed 93 percent of target date funds in the
21 marketplace?

22 A. Correct.

23 Q. And the S&P Target Date Index in that
24 circumstance outperformed 98 percent of the target date
25 funds in the marketplace?

1 A. Correct.

2 Q. Meaning 98 percent of target date funds would
3 have performed worse than the S&P Target Date 2020 Fund 11:28:59
4 on a three-year basis?

5 A. Yes.

6 Q. Okay.

7 And on a five-year basis, Fidelity Freedom 2020
8 Fund was in the 34th percentile?

9 A. Correct.

10 Q. Meaning that it outperformed 66 percent of
11 target date funds?

12 A. Yes.

13 Q. And on a five-year basis, the S&P Target Date
14 Index outperformed 84 percent of target date funds?

15 A. Correct.

16 Q. So I was under the impression maybe, or 11:29:30
17 misimpression, that the S&P Target Date Index would
18 actually be sort of right in the middle of where target
19 date funds would be, but that's not actually the case;
20 correct?

21 A. Well, not in this particular period it's not.

22 Q. Okay.

23 Let's go to the 2025 fund. That's on page 54 of 68
24 of the PDF. 11:29:58

25 A. Got it.

1 Q. The committee would have been told as of this
2 time period that the Fidelity Freedom K 2025 Fund was
3 ranked in the 7th percentile; correct?

4 A. That is correct.

5 Q. And that's on a three-year basis?

6 A. Yes.

7 Q. And that means it outperformed 93 percent of
8 target date funds?

9 A. Yes.

10 Q. And the S&P Target Date 2025 Index outperformed
11 97 percent of target date funds on a three-year basis? 11:30:26

12 A. Correct.

13 Q. And on a five-year basis the Fidelity Freedom
14 2025 Funds were ranked in the 32nd percentile; right?

15 A. Yes.

16 Q. Meaning it outperformed 68 percent of other
17 target date funds?

18 A. Correct.

19 Q. And the S&P Target Date Index that you used as
20 a benchmark outperformed 73 percent of target date
21 funds?

22 A. Correct.

23 Q. Meaning 73 percent of target date funds would 11:30:57
24 have performed worse than the S&P Target Date Index on a
25 five-year basis?

1 A. Correct.

2 Q. Let's go to the 20 --

3 A. You're trying to test my eyes and my simple
4 math skills? You're doing a good job.

5 Q. Testing my math skills.

6 A. I got to agree with what you say.

7 Q. So the S&P 2030 Fund -- excuse me, not S&P 2030 11:31:26
8 Fund -- the Fidelity Freedom K 2030 Fund on a three-year
9 basis was ranked 8th; correct?

10 A. Correct.

11 Q. Meaning it outperformed 92 percent of target
12 date funds?

13 A. Correct.

14 Q. And the S&P Target Date 2030 benchmark was in
15 the top 4 percent?

16 A. Correct.

17 Q. Meaning it outperformed 96 percent of target
18 date funds?

19 A. Correct.

20 Q. And on a five-year basis, the Fidelity Freedom 11:31:57
21 K Fund was in the top 32nd percentile?

22 A. Correct.

23 Q. Meaning it outperformed 68 percent of target
24 date funds?

25 A. Correct.

1 Q. Let's skip to the 2035 Fund. That is the next
2 page, 56 of 68 of the PDF.

3 A. Got it.

4 Q. The Fidelity 2035 Fund as of December 31, 2016
5 was in the top 8th percentile; correct? 11:32:29

6 A. Yes.

7 Q. Meaning it did better than 92 percent of target
8 date funds?

9 A. Correct.

10 Q. And the index that you use as the benchmark
11 ranked third, meaning it outperformed 97 percent of
12 target date funds?

13 A. Correct.

14 Q. And on a five-year basis, the Fidelity Freedom
15 K Funds were in the top 34th percentile?

16 A. Correct.

17 Q. And the S&P Target Date Index for the 2035 11:33:00
18 five-year basis was in the top 30th percentile?

19 A. Correct.

20 Q. Let's go to the 2040. This is page 57 of 68.

21 A. Got it.

22 Q. The Fidelity Freedom K 2040 Fund was in the top
23 15th percentile?

24 A. Correct.

25 Q. Meaning that it outperformed 87 percent of

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1 other target date funds?

2 A. Correct.

11:33:30

3 Q. And the benchmark, the S&P Target Date 2040,
4 was in the top 6th percentile?

5 A. Correct.

6 Q. Meaning, 94 percent of target date funds
7 performed worse than the S&P Target Date 2040 Fund?

8 A. Correct.

9 Q. And on a five-year basis, the 2040 fund for the
10 Fidelity Freedom Fund was at the 35th percentile?

11 A. Correct.

12 Q. Meaning that it outperformed 65 percent of
13 other target date funds?

11:33:59

14 A. Correct.

15 Q. Let's go to the 2045 fund.

16 A. You're not going to bother with the S&P?

17 Q. Oh, we can go do the S&P for that one too.

18 That was in the 20th percentile?

19 A. Correct.

20 Q. Meaning that benchmark outperformed 80 percent
21 of target date funds?

22 A. Correct.

23 Q. Meaning 80 percent of the target date funds in
24 the marketplace performed worse than that benchmark?

25 A. Correct.

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1 Q. Let's go to the 2045.

11:34:29

2 The Fidelity Freedom K 2045 Fund was ranked in the
3 31st percentile; correct?

4 A. No.

5 Q. Well, my bad. I was reading the one-year
6 ranking.

7 A. I knew there was a reason I was paying
8 attention.

9 Q. There you go.

10 On a three-year basis, the Fidelity Freedom K 2045
11 Fund was ranked in the 12th percentile?

12 A. Correct.

13 Q. Meaning that the Fidelity Freedom K 2045 Fund 11:34:57
14 did better than 88 percent of target date funds?

15 A. Correct.

16 Q. That's information that would have been
17 communicated to the folks on the committee after
18 December 31 of 2016?

19 A. Correct.

20 Q. And the S&P Target Date Index that's the
21 benchmark was in the 3rd percentile?

22 A. Correct.

23 Q. Meaning it performed better than 97 percent of
24 the 2045 target date funds?

25 A. Correct.

1 Q. And on a five-year basis, the Fidelity Freedom
2 K 2045 Funds were ranked in the 41st percentile? 11:35:29

3 A. Correct.

4 Q. And the S&P target date benchmark was in the
5 17th percentile?

6 A. Correct.

7 Q. And that means the Fidelity Freedom K 2045 Fund
8 on a five-year basis did better than 59 percent of the
9 other target date funds in the market?

10 A. Correct.

11 Q. And also that 83 percent of target date funds
12 would have failed -- that is, fallen below the target
13 date index on a five-year basis? 11:35:58

14 A. Correct.

15 Q. Let's go to the 2050 fund, which is page 59 of
16 68.

17 A. Got it.

18 Q. On a three-year basis, the Fidelity Freedom
19 2050 Fund was in the 20th percentile; correct?

20 A. Correct.

21 Q. Meaning it did better than 80 percent of target
22 date funds?

23 A. Correct.

24 Q. And the benchmark is the 9th percentile? 11:36:24

25 A. Correct.

1 Q. Meaning that 91 percent of target date funds
2 fell below the benchmark?

3 A. Correct.

4 Q. And on a five-year basis, the Fidelity Freedom
5 K 2050 Fund was in the 23rd percentile?

6 A. Correct.

7 Q. And the benchmark was in the 8th percentile?

8 A. Correct.

9 Q. Meaning over 90 percent of target date funds
10 performed worse than the benchmark as of December 31 of
11 2016?

12 A. Correct. 11:36:58

13 Q. Okay.

14 Let's go to the 2055 Fund.

15 The Fidelity Freedom K 2055 Fund was ranked in the
16 15th percentile; correct?

17 A. Correct.

18 Q. Meaning it did better than 85 percent of target
19 date funds?

20 A. Correct.

21 Q. And the benchmark, the S&P Target Date Index
22 was in the 3rd percentile?

23 A. Correct.

24 Q. Meaning 97 percent of target date funds did
25 worse than that benchmark? 11:37:29

1 A. Correct.

2 Q. And on a five-year basis, the Fidelity Freedom
3 K 2055 Fund was ranked in the 41st percentile; correct?

4 A. Correct.

5 Q. And that means it did better than 59 percent of
6 target date funds?

7 A. Correct.

8 Q. But the S&P Target Date Index actually did
9 better than 90 percent of target date funds?

10 A. Correct.

11 Q. Meaning nine out of ten target date funds would
12 not have outperformed the S&P target date?

13 A. Correct.

11:37:59

14 Q. Okay.

15 Let's go to the 2060. There's not enough
16 information in order to be able to evaluate.

17 A. Let's see here. That's 2055. This shows a
18 repeat of the 20 -- oh, the 2060. It's done against the
19 2055 target date that doesn't otherwise exist.

20 Q. And there's no 2065 fund with no three-year
21 performance as of this point in time either.

11:38:28

22 A. Got it. Yes.

23 Q. How common is it for plans to use the Lipper
24 ranking when evaluating investment performance?

25 A. I don't know specifically. It's certainly one

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1 of the known peer group rankings. 11:38:47

2 Q. Let's go to paragraph 31-D of your report, sir.

3 A. Okay.

4 Q. Paragraph 31-D you describe evaluating the
5 Fidelity Freedom Fund against the peer group; correct? 11:39:28

6 A. Correct.

7 Q. But you don't use the peer group that's set
8 forth in the quarterly materials that were provided to
9 the Quanta plan fiduciaries; correct?

10 A. That's correct.

11 Q. You create your own peer group?

12 A. No. I chose a peer group that was provided by
13 the consultant in their annual deep dive review of which
14 they considered an important part of the annual review
15 process of the target date funds as they state in their 11:40:00
16 report.

17 Q. Okay.

18 Did you pick that just because the consultants used
19 it in their target date deep dives that they provided to
20 the committee or for any other reason?

21 A. It's normal for peer group assessment to be
22 done by plan fiduciaries. That is, relevant performance 11:40:25
23 is always an important measurement criteria. There are
24 several peer group sort of providers, if you will, data
25 provider. Morningstar is used. Lipper is used. Those

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1 are the dominant ones. The problem with those peer 11:40:51
2 groups is that they are large in terms of they try very
3 hard to be comprehensive in putting the entire universe
4 of providers in without any filters. It is normal in
5 the analytical process in reviewing the performance of a
6 particular fund to put filters on that represent some of
7 the qualitative aspects of the process called for in the 11:41:29
8 IPS. In the case of this IPS, because of the size of
9 the Quanta fund, the most particularly relevant criteria
10 is size, and that's a very pragmatic restriction, which
11 is to say that since TDFs are a reasonably new 11:41:56
12 phenomenon sort of in the last 20 years, 25 years, there
13 are -- there are many new funds that have not yet gained
14 what we would call sufficient critical AUM mass to be
15 fair representatives of funds that are investable by a
16 large plan like Quanta. So in the same way that the IPS 11:42:28
17 references size of AUM as a key qualitative criteria,
18 it's my opinion based on my experience that the --
19 putting a size filter on a peer group is a very relevant
20 exercise, because otherwise you run into a problem of
21 trying to compete against funds which are not really 11:42:58
22 true peers because they are too small to be usable and
23 investable by the fund. And I believe that is what
24 underlies the provision of the deep dive list, and I
25 believe it's why when Ascend provides the deep dive

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1 report every year to the committee, it does so based on 11:43:27
2 a significantly pared-down peer group, the most relevant
3 peer group, and I believe it is valuable information to
4 say that that was the peer group that Ascend thought
5 that at least annually the committee should review to
6 see how their chosen fund was performing against the 11:43:55
7 other peers available in the market.

8 So that is why I chose to use the peer group that
9 was provided. I could have formulated my own peer
10 group, but that would have been somewhat arbitrary and
11 less linked to the experience of the committee. This
12 was linked directly to the experience of the committee.
13 It was information provided to the committee by their
14 consultant, and therefore I thought the most relevant 11:44:32
15 peer group available at the time for the committee's
16 use.

17 Q. Sir, do you know how many other plan fiduciary
18 committees do target date deep dives like the one you
19 are referencing that Quanta plan fiduciaries did?

20 A. I don't.

21 Q. Do you know if other plan fiduciaries evaluate 11:44:55
22 the performance of their target date funds against the
23 Lipper peer group?

24 A. As I said before, I know it's a commonly used
25 peer group for all purposes. I don't know specifically

1 which or how many funds used Lipper for their review
2 purposes or even a modified Lipper. Look, you can
3 take -- My analysts are capable of taking the Lipper 11:45:27
4 peer group, putting filters against it. This is what
5 Lipper does and Morningstar does when you buy their
6 services and Bloomberg does when you buy its services.
7 And so any consultant or any analyst who's reviewing
8 performance data can take the universe and narrow the
9 universe to be more applicable to the pragmatic
10 circumstance involved, and therefore when you make a 11:46:00
11 broad comment or broad question like who else uses
12 Lipper, they may use Lipper, or they may use a modified
13 Lipper, or they may use something else. I'm sure it is
14 used by some, but I don't know how many or which.

15 Q. The "Investment Policy Statement" does not call
16 for evaluating the performance of the funds against the
17 specific universe of funds that are identified in the 11:46:28
18 target date deep dive; correct?

19 A. The IPS is unclear. It says "relative peer
20 group," and my concern about the broader Lipper peer
21 group or even a Morningstar peer group, which I might
22 have constructed, was the concern I indicated which is
23 those would have to be narrowed considerably to be the 11:46:58
24 most relevant, and it did happen to be something that
25 was provided annually to the committee, so it did indeed

1 represent, in my opinion, the best available peer group
2 to analyze this fund against.

3 Q. And the peer group that if you had analyzed the
4 peer group against the Lipper peer group that was 11:47:28
5 provided to the committee on a quarterly basis, the
6 Fidelity Freedom Fund would have passed the test that
7 you articulate in your report in paragraph 31-D because
8 they performed better than the peer group median;
9 correct?

10 A. I would have to look at it over all of the
11 quarters that I focused on for this purpose. But I am
12 fairly certain just based on the reading of the 4th 11:47:54
13 quarter 2016 -- which by the way, was indeed the best of
14 the quarters in terms of the performance of Fidelity
15 Freedom. As I indicated before, they were only, on a
16 relative basis, I think 83 percent in breach where most
17 of the other quarters were -- had a greater percentage
18 of breach indexes. So I would imagine that the 11:48:23
19 Lipper -- brought up Lipper universe peer comparison
20 which is shown in these reports would show a better
21 outcome than the deep dive, more relevant peer group
22 index showed. That would not surprise me.

23 Q. Not just better. I mean, we just went through
24 each of the target date funds and showed that, I think 11:49:00
25 with one exception, they performed better than the

1 median on every one, and many of them were in the top 20
2 percent which means they would have passed the criteria
3 that you articulate in your report in paragraph 31-D.

4 A. Again, I don't have a full analysis here. I do
5 recall as we were going through them some that wouldn't 11:49:26
6 have met the criteria, but many more would have met the
7 criteria and not failed using the broader, less relevant
8 peer group.

9 Q. And as you sit here today, you don't know how
10 prevalent it is for plan fiduciaries to use the Lipper
11 peer group for evaluating funds as opposed to some other
12 deep dive peer group that plan fiduciaries might look at 11:49:58
13 for further analysis?

14 A. No. I think I answered that question already.
15 I don't know specifically. I'm not surprised that
16 Lipper is used, but they may be using modified Lipper
17 that are more narrowed down. I believe the industry
18 standard is to try to use the most appropriate index
19 available, and I believe that's what induced Ascend --
20 who by the way, was indicating underperformance for much 11:50:30
21 of this period of time for these vintages on its
22 reports. I presume it motivated them to say to the
23 committee, at least on an annual basis, hey, you best
24 look at this more relevant peer index, and you have
25 better choices available to you here. That's what I

1 read into those reports.

2 Q. That's a really good point, Mr. Marin. 11:50:57

3 You didn't look at any of the deposition testimony
4 from the consultant at Ascend or QPA; correct?

5 A. Correct.

6 Q. And you didn't look at any of the deposition
7 testimony from the actual committee members?

8 A. I have not.

9 Q. So you have no idea why the target date deep
10 dives were provided to the committee or what was
11 discussed by the folks on the committee or by the
12 consultants at Ascend related to the target date deep 11:51:26
13 dive or the performance of the Fidelity Freedom Fund in
14 the 4th quarter of 2016?

15 A. Outside of my scope.

16 Q. Got it.

17 Mr. Marin, I have I think a little bit of a simple
18 math question for you.

19 A. Okay.

20 Q. If you were to take the universe of target date
21 funds that exist and pick the ten best of those target
22 date funds -- So far so good?

23 A. Got it.

24 Q. Okay.

25 And then you were to say, I want to see if a target

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1 date fund is falling above or below the median of this
2 group of the top ten --

11:52:29

3 A. Right.

4 Q. -- you're going to get about half that fall
5 below the median; right?

6 A. Correct.

7 Q. And that's true even though these are the top
8 ten target date funds?

9 A. Correct.

10 Q. And if you were to say out of all of the target
11 date funds in the universe, I'm going to compare the top
12 two, you would have one that falls above the median and
13 one that falls below the median -- correct? -- unless
14 their performance was exactly the same?

11:52:56

15 A. Yes. But may I add something?

16 Q. If it's an answer to my question, sure.

17 A. Well, I believe that this, as you characterize
18 it, best performing list, which I'm presuming you're
19 equating in some way, shape, or form to the deep dive
20 list, also better fits the qualitative criteria of the
21 fund, then there is a much higher degree of relevance to
22 that median performance criteria hurdle that is
23 described in the IPS and that I used in my report.

11:53:25

11:53:58

24 Q. Mr. Marin, have you done any analysis to see
25 whether a fund that performs above the benchmark on a

1 three-year basis or a five-year basis over the last
2 three years or five years is likely to do better than a
3 fund that performed above or below the benchmark over
4 the last three or five years?

5 A. Well, you're talking about an analysis of
6 reversion of mean effectively, and it's a hotly debated 11:54:30
7 issue in investment management in general. The answer
8 is that all you have on a contemporaneous basis to look
9 at is historical performance as well as the qualitative
10 issues that are shown and listed and discussed. And
11 while history is no predictor for future returns, the 11:54:59
12 best you can do as a performance analyst is to ask
13 whether or not the fund in question has underperformed,
14 and the IPS calls for underperformance to be -- to be a
15 criteria, one, for not selecting it, and two, for 11:55:27
16 putting it on monitor, alert, and removing it.

17 So as far as I'm concerned, trying to get into,
18 let's call it, advanced and theoretical approaches to
19 predictive methodologies is not something that is called
20 for in the IPS. It's not something that is used on a
21 day-to-day basis in most of these performance 11:55:57
22 evaluations, and therefore, it's not something that I
23 used in this particular analysis.

24 Q. My question was whether you did any studies on
25 it.

1 A. I have read plenty of studies on it over my 47
2 years in the industry, so I've been aware of it. But
3 I'm not a research analyst, so no, I didn't perform a
4 study.

5 Q. And in connection with your report in this case
6 or in any other capacity, you haven't done any analysis
7 to see whether the tests that you articulate in 11:56:29
8 paragraph 31-B is likely to yield a better target date
9 fund over the next three or five or ten years or a worse
10 target date fund over the next three or five or ten
11 years; correct?

12 A. I'm not sure anybody has that kind of crystal
13 ball or any particularly better ability to do that than
14 through, you know, analytics. You can so some
15 problemistic assumptions, but there's no guarantees, and 11:56:58
16 there's no certainty of being able to be highly
17 predictive, no.

18 Q. And you haven't done any sort of analysis like
19 that?

20 A. For this exercise? No.

21 Q. Ever.

22 A. Like I said, I've had up to 60 research
23 analysts doing work for me, and in my academic
24 experience as a professor of the practicum in investment 11:57:29
25 management at a major business school for over a decade,

1 I've certainly seen the studies. I've discussed those
2 studies with plenty of academics and practitioners, and
3 so I'm very aware of them. I know that on a practical
4 basis in reviewing and doing the kind of assessment
5 that's called for in this case in this time frame based 11:57:59
6 on this IPS that it's not called for.

7 Q. My question, sir, is whether you've ever done a
8 study. 11:58:16

9 THE REPORTER: I'm sorry. I'm having a computer
10 problem.

11 (Pause in the proceedings.)

12 THE REPORTER: "My question, sir, is whether you've
13 ever done a study --"

14 MR. BLUMENFELD: That was the question.

15 THE REPORTER: And the answer?

16 THE WITNESS: You want me to give my answer again,
17 Jeremy?

18 MR. BLUMENFELD:

19 Q. You said you're not a research scientist, so
20 no?

21 A. I would have said, and if you'd let me finish,
22 was to say that I'm not a research scientist, so no, I 11:58:58
23 personally have not done it.

24 But as I said, I've had a number of people working
25 for me who have conducted those studies, and I have

1 participated in, you know, review and conversation of
2 those as I have in the academic environment as well, so
3 I rely on a research analyst who does them. Though I
4 haven't done them, but I have participated in doing 11:59:29
5 them.

6 Q. And my question, sir, was specifically about
7 target date funds.

8 So you're saying you've participated in studies
9 that have been done about the analysis that's contained
10 in paragraph 31-B of your report and whether it yields
11 better target date funds as opposed to worse target date
12 funds over the next three or five or ten years?

13 A. Yes.

14 Q. Okay.

15 What studies?

16 A. I can't name the specific studies. I'm saying 11:59:58
17 that I recall our people doing them at Bankers Trust and
18 Deutsche Asset Management in particular but also
19 reviewing them when I was at Bear Stearns Asset
20 Management. And I didn't do the studies, as I said, but
21 I was involved in discussing and reviewing those
22 studies, and the same can be said of my work as a
23 clinical professor of investments at Cornell.

24 Q. But you can't identify any of the studies that 12:00:29
25 you're describing?

1 A. Not off the top of my head, no.

2 Q. Okay.

3 And how many target date funds existed before 2003?

4 A. I -- I don't know specifically. I don't have
5 that information. I'd have to look at the historical
6 records.

7 Q. And am I right that you don't recall the names
8 of the studies that you're describing or the outcomes of 12:00:58
9 the studies that you're describing or any specifics of
10 the analyses that you're describing?

11 MR. BERIN: I'll object to the form.

12 THE WITNESS: Yeah. I think, as I said, I'm not a
13 research analyst, so no, those are not on the tip of my
14 tongue.

15 MR. BLUMENFELD:

16 Q. Okay.

17 So paragraph 31-C, have you conducted any studies
18 to evaluate whether information ratio analyses like what
19 you describe in paragraph 31-C yield better target date 12:01:25
20 funds or worse target date funds over the following
21 three or five or ten-year period?

22 A. No.

23 Q. And are you aware of any other studies that
24 anybody else has done?

25 A. I have seen that. I've seen studies over the

1 years that incorporate a review of the content value of
2 information ratio analysis. I just can't name the
3 studies.

12:02:00

4 Q. Were any of those studies about target date
5 funds?

6 A. Yes.

7 Q. But you can't name the studies?

8 A. I cannot.

9 Q. Okay.

10 Do you remember the decade that the study was
11 published in or conducted?

12 A. In the last 20 years.

13 Q. Okay.

14 Would it have been in the last ten years?

12:02:26

15 A. Probably.

16 Q. And do you recall the outcome of the study that
17 you're describing whose name you don't know?

18 A. I don't remember enough about the studies.

19 What I do remember is there is -- that no one technique

20 is totally predictive, and that indeed the methods used

12:02:55

21 in this particular IPS called for. The criteria called

22 for in this IPS were standard industry practice, and

23 nothing that was being provided by the academy was being

24 used to supplant that at that moment in time, again

25 remembering that this -- the reference period is almost

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1 a decade ago. So when you ask about what I've seen in
2 the last decade, I'm not sure how relevant that is to
3 the time period we're considering here.

12:03:29

4 Q. When you say the "academy," what academy are
5 you referring to?

6 A. I mean the academic community in the investment
7 management space.

8 Q. Let's go back to the "Investment Policy
9 Statement."

12:04:06

10 A. Okay. Got it.

11 Q. Just so the record is clear, this is Exhibit 2
12 to your deposition; correct?

12:04:29

13 A. Correct.

14 Q. The investment watch list process document?

15 A. So page 14 of 18?

16 Q. Page 14 of 18.

17 You start your analysis of the Fidelity Freedom
18 Funds in the 4th quarter of 2015; correct?

19 A. I do.

20 Q. And so in that quarter you say the funds should
21 be put on monitor status in accordance with the terms of
22 the "Investment Policy Statement"; correct?

23 A. Correct.

12:04:59

24 Q. And then the second quarter will be Q1 of 2016;
25 correct?

1 A. Yes.

2 Q. And you say they should stay on monitor status
3 then; correct?

4 A. Correct.

5 Q. That's their second quarter on monitor status;
6 correct?

7 A. Right.

8 Q. Then we get to Q2 of 2016, and you say they
9 should be on monitor status then too?

10 A. Correct.

11 Q. That's their third time period that they're on 12:05:27
12 monitor status?

13 A. Correct.

14 Q. And then we get to Q3 of 2016?

15 A. Correct.

16 Q. And you say they should be still on monitor
17 status; correct?

18 A. Correct.

19 Q. And that's their fourth quarter that they're on
20 monitor status; correct?

21 A. Correct.

22 Q. Q4 of 2016 performance you say again warrants 12:05:55
23 them staying on monitor status; correct?

24 A. Well, after four quarters doesn't it switch to
25 alert?

1 Q. Good point. Thank you for correcting me on
2 that.

3 So after four quarters they should move to alert
4 status; correct?

5 A. I believe so, yes.

6 Q. Okay.

7 So then as of January 1 of 2017, they're on alert
8 status as of the performance for the immediately 12:06:27
9 preceding quarter; correct?

10 A. Say that one more time?

11 Q. As of January 1 of 2017, they are on alert
12 status based on their performance as of the immediately
13 preceding quarter?

14 A. Yes.

15 Q. 2016?

16 A. Yes.

17 Q. And that's based on your application in
18 paragraph 31 of your report of how you interpret the
19 criteria set forth on the watch list process; correct?

20 A. Correct. 12:06:59

21 Q. Okay.

22 Now, this says in the "Investment Policy Statement"
23 that an investment can remain on alert status for at
24 least two quarters, and then the committee will consider
25 alternative investments; correct?

1 A. It said it can, yes.

2 Q. Okay.

3 And under the terms of the "Investment Policy
4 Statement" then, the investment wouldn't be removed as
5 of Q1 of 2017?

6 A. Well, the "Investment Policy Statement" says 12:07:27
7 that after it's been on monitor for four quarters, and
8 after it's been put on alert, the way I interpret it is
9 that that effectively says that if it remains unimproved
10 at that point and continues to breach the criteria
11 standards that it can and should be removed.

12 Q. So the "Investment Policy Statement" says that 12:08:00
13 "After two consecutive quarters on alert status, the
14 committee shall consider alternative investment options
15 and discuss the merits of replacing or continuing the
16 investment"; correct?

17 A. Well, it says no later.

18 Q. Right.

19 A. I interpret that paragraph differently than
20 apparently you do. I interpret that paragraph to mean
21 that worst case they could leave something on alert for 12:08:30
22 two quarters, but that if it's been on monitor for four
23 quarters, and the fifth quarter it goes on alert that
24 that is -- that is sufficient to indicate removal.

25 Q. Okay.

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1 Did you ask -- did you -- not ask. 12:08:54

2 We already talked about the fact you didn't review
3 the deposition testimony from anybody at Quanta or from
4 the consultant about how they interpreted and applied
5 the monitoring list criteria; correct?

6 A. No, I didn't. I just used what was written in
7 the IPS.

8 Q. Okay.

9 And if your interpretation of that IPS provision is
10 incorrect, then the funds wouldn't be subject to removal
11 as of Q1 of 2017; correct? 12:09:29

12 MR. BERIN: Objection as vague.

13 THE WITNESS: My interpretation would suggest that
14 they are subject to removal, and my experience in the
15 industry would imply that that is grounds for removal,
16 and my citations of -- in my report of other literature
17 which indicates that that's a framework for removal are
18 all very consistent. 12:10:00

19 MR. BLUMENFELD:

20 Q. Right, but you're not answering my question.

21 A. What is your question again then?

22 Q. If your interpretation of the "Investment
23 Policy Statement" is not correct, then the funds would
24 not be subject to removal under the terms of the
25 "Investment Policy Statement" as of Q1 of 2017?

1 MR. BERIN: Object to the form.

2 THE WITNESS: Well, so you're posing a hypothetical
3 to me; is that correct?

4 MR. BLUMENFELD:

5 Q. I was asking a very simple question, sir. 12:10:29

6 A. But isn't your question a hypothetical?

7 Q. I'm asking if your interpretation of the
8 "Investment Policy Statement" is incorrect.

9 A. Okay. That's a hypothetical.

10 Q. Okay.

11 Then yes, it's a hypothetical question.

12 A. Okay. So since I believe my interpretation is
13 correct, I believe there has to be removal.

14 Q. Right.

15 And if your interpretation is not correct, then it 12:10:58
16 wouldn't be subject to removal as of Q1 of 2016;
17 correct?

18 MR. BERIN: Object to the form.

19 THE WITNESS: If my interpretation is incorrect,
20 then I would want to figure out what the criteria is
21 supposed to be for removal, because to me showing five
22 quarters using three and five-year averaging of 12:11:28
23 breach-of-performance standards or underperformance as
24 is characterized by Ascend is, by all standards I've
25 ever seen for 47 years in the industry, a clear

1 indicator for removal.

2 So if you're telling me that somehow I'm wrong
3 hypothetically, then I would first start by saying,
4 well, then what is the criteria for removal? And if
5 that isn't, what is? And I would start by asking that
6 question.

7 MR. BLUMENFELD:

8 Q. Okay.

9 Can you answer my question?

10 A. Well, rephrase it one more time.

11 Q. Mr. Marin, you just have to listen to it.

12 A. Well, I'm trying to listen to it, but you're
13 posing a hypothetical that doesn't make sense to me.

14 Q. You said, Mr. Marin, that you're interpreting
15 the "Investment Policy Statement" to call for a fund
16 that has been on alert status for one quarter to be
17 subject to removal.

18 A. And I believe that the committee has the
19 discretion under the IPS to do that, yes.

20 Q. Okay.

21 And that's fine. That's your hypothetical
22 interpretation of the "Investment Policy Statement." I
23 was asking you about the contrary hypothetical --
24 meaning, your interpretation is not correct, and the
25 investment option is supposed to be on alert status for

12:11:56

12:12:29

12:12:58

1 two quarters after being on monitor status for four
2 quarters.

3 And if that's true, then under the terms of the
4 "Investment Policy Statement," this investment would not
5 be subject to removal as of Q1 of 2017; correct?

6 A. If all what you state hypothetically is true,
7 then I'm presuming that one would look at this for one
8 more quarter, which is the first quarter of 2017, and 12:13:29
9 judge it accordingly at that point for removal.

10 Q. Okay. Good.

11 Now, you mentioned that you cited some other
12 studies or analysis about this idea of four consecutive
13 review periods.

14 A. Correct.

15 Q. So where do you do that?

16 A. Well, I thought I had that in the -- in one of
17 my footnotes where I reference some of the studies. 12:13:59
18 Take a look --

19 Q. Take your time. 12:14:23

20 A. If you look at Footnote 16 on page 11 -- 12:14:46

21 Q. Footnote 16?

22 A. Yes. Oh no, no, no, no, no. Footnote 11 on
23 page 9. 12:15:25

24 Q. Is that it?

25 A. Yes.

1 Q. Okay.

2 And what you cite in Footnote 11 says that a watch
3 list can be based on underperformance against an index
4 for three consecutive quarters, among other things. 12:15:58

5 Actually, what you cite in Footnote 11, let me read the
6 entire thing, quote, "Trustees should define changes to
7 a fund by designating the fund to a watch list or to
8 terminate that fund as an option under the plan. The
9 watch list may be based on performance," comma,
10 "three-year peer ranking below the median for three
11 consecutive quarters," comma, "three-year index under
12 performance for three consecutive quarters, violating 12:16:29
13 risk guidelines, style drift for three quarters, or loss
14 of key investment people."

15 That's the first cite; correct?

16 A. Correct.

17 Q. And that doesn't say anything about a fund
18 getting removed after four or five quarters of being on
19 a watch list?

20 A. It says designating the funds to a watch list
21 or to terminate the funds.

22 Q. It says that, but then the next sentence says,
23 "The watch list can be based on --" and then it 12:16:59
24 articulates all of these criteria.

25 A. Well, I believe that captures the essence of my

1 choice to terminate after five quarters of
2 underperformance, and I think the next reference does
3 the same.

4 "If at any time any of the following criteria are
5 triggered, the investment manager shall be notified of
6 the board's concerns and shall be terminated at the 12:17:26
7 discretion of the board in consultation with the
8 investment performance consultant. Four consecutive
9 quarters of performance below the 'X' percentile in
10 performance rankings for the investment manager's
11 specified numbers."

12 Q. Well, the first one doesn't actually address
13 removal after four quarters or five quarters or six
14 quarters at all; correct?

15 A. The first one says that "The trustee should
16 define responses to changes in a fund by designating the 12:17:57
17 fund to a watch list or to terminate that fund."

18 Q. Right. Keep reading.

19 A. "As an option under the plan --"

20 Q. Keep reading.

21 A. "-- the watch list --" okay. Now it's talking
22 specifically about the watch list -- "may be based upon
23 performance in the three-year rankings, median of three
24 years." It's just going through the specificity of the
25 criteria.

1 Q. For the watch list?

2 A. Right. And they're talking about even a 12:18:28
3 shorter time frame there, three quarters.

4 Q. No, Mr. Marin. What this says is after three
5 consecutive quarters, the fund can be placed on a watch
6 list.

7 A. Or to terminate that fund.

8 Q. You're taking part of the sentence that is in
9 one place in the document --

10 A. Then tell me what -- what the "or terminate the
11 fund" refers to in this instance? 12:18:58

12 Q. That's fine. I don't need to argue with you.
13 The document that you cite speaks for itself on that
14 one.

15 Let's look at the next one.

16 What's the title of the second document?

17 A. "State and Local Government Retirement Law, a
18 Guide for Lawyers, Trustees, and Plan Administrators."

19 Q. Okay.

20 And the blank about the percentile is a blank;
21 correct?

22 A. Yes.

23 Q. What criteria -- what criteria did you apply in 12:19:27
24 that category?

25 A. 50th percentile based on the peer group that I

1 thought was most relevant.

2 Q. Can you, sir, identify any plans in the last
3 ten years that remove a fund after being on a watch list
4 for four quarters?

5 A. You continue to ask me to reference specific 12:19:59
6 funds, and my answer is no, not specifically, but I
7 believe that is an industry standard.

8 Q. Okay.

9 What about five quarters?

10 A. Well, I say that it's -- it's a little
11 different for target date funds, and four or five
12 quarters is an appropriate period of time for
13 underperformance leading to termination when it comes to 12:20:28
14 target date funds, and it's even shorter for individual
15 funds, in my opinion, using three and five-year average.

16 Q. Can you identify any other plans that remove a
17 target date fund based on being on a watch list for five
18 quarters?

19 A. I haven't done a study of the plans that have
20 removed funds for performance, so the answer is no, I 12:20:58
21 can't do that.

22 Q. Okay.

23 Do you know what percentage of target date funds
24 would fail the criteria that you articulate in
25 paragraph 31-A, B, C, and D of your report?

1 A. Well, I'm not sure --

2 MR. BERIN: Object to the form.

3 THE WITNESS: Yeah. I'm not sure I consider it 12:21:29
4 relevant how many target date funds. That was outside
5 my scope to do that. What I would tell you is that I
6 believe under a smaller, more appropriately defined peer
7 universe there would most likely be several that
8 underperformed and didn't meet the criteria.

9 But like you said yourself, that's the nature of
10 using the median as the bar that needs to be -- that 12:21:59
11 needs to be covered. Half of them will fail.

12 MR. BLUMENFELD:

13 Q. And as against the benchmark that you
14 articulate in paragraph 31-B, we saw from the 4th
15 quarter 2016 report 97 percent of some of the target
16 date funds would fail?

17 A. It's 97 percent --

18 MR. BERIN: I'll object to the form.

19 THE WITNESS: It's 97 percent of what I would 12:22:29
20 consider the entire peer universe.

21 MR. BLUMENFELD:

22 Q. Okay.

23 A. An inappropriate peer universe. And by the
24 way, one other observation. You can't pick out one 12:22:58
25 vintage, because as we know, these target date funds are

1 sold as a suite, so you have to do what I did in my
2 analysis which is to say how many of those vintages have
3 breached that standard, and you have to look at sort of
4 the percentage of the vintages, not one that happened to
5 hit 97 percent against a peer universe that isn't 12:23:27
6 appropriate. So I'm not sure your numerical comment is
7 particularly useful.

8 Q. Mr. Marin, you raise a good point.

9 The "Investment Policy Statement" doesn't indicate
10 this notion of half of the vintages performing below the
11 median or half of the vintages performing below the
12 benchmark at all; right?

13 That's something that you made up in connection
14 with this case?

15 MR. BERIN: Object to the form.

12:23:58

16 THE WITNESS: That's something that has to be done
17 to analyze this type of investment.

18 MR. BLUMENFELD:

19 Q. Do you know if other plans utilized that type
20 of methodology when it comes to evaluating your target
21 date funds?

22 A. Well, I can tell you that Ascend, because it
23 lists every individual vintage, it's implied that they
24 look at that information across all vintages. 12:24:24

25 Q. Okay.

1 So you've got this plan that does it.

2 Can you identify any other plans that apply the
3 methodology you're describing?

4 A. No.

5 Q. Okay.

6 Can you go to page 24 of your report where it
7 starts?

8 A. On Section 47?

9 Q. What's that?

10 A. Section 47 on page 24?

11 Q. Sorry, Mr. Marin. I'm trying to go to your 12:25:27
12 report.

13 A. I'm looking at my report in hard copy.

14 Q. I got you. I was looking at the PDF pages.

15 A. Sorry.

16 Q. Paragraph 42?

17 A. Okay. All right. Yes.

18 Q. This is where you describe the selection of an
19 alternative investment to the Fidelity Freedom Funds;
20 correct?

21 A. Section 42? 12:25:58

22 Q. Paragraph 42.

23 A. Yeah. I'm looking at paragraph 42.

24 Q. Okay.

25 A. I'm just looking at it for a moment. Give me a

1 moment.

2 Q. Yeah. Take your time.

3 A. Yes. Go ahead.

4 Q. This is the beginning of the section where you

5 describe selecting an alternative investment to the

6 Fidelity Freedom Funds; correct?

12:26:28

7 A. Correct.

8 Q. And you engage in a numerical scoring

9 methodology?

10 A. I do, yes.

11 Q. Where you rank some target date funds on

12 different criteria?

13 A. Correct.

14 Q. And for this analysis, you used some of the

15 funds from the target date deep dive but some other

16 funds that you selected; correct?

17 A. I treated the analysis as a two-pronged

18 analysis. The first prong was to determine whether or

12:26:58

19 not the Freedom Funds should be terminated, and that was

20 the first prong of the analysis. Once I had determined

21 that they should be terminated in the time frame I

22 indicated, I looked on a contemporary basis at the

23 entire universe of TDF funds using the Morningstar

12:27:23

24 database, then narrowed down for the criteria called for

25 in the IPS, and that led to an array of funds, a dozen

1 funds which met that criteria. And there was meaningful
2 overlap with the deep dive list, but I did not use the
3 deep dive list because the deep dive list was a peer 12:27:59
4 group used for assessment in the first prong. The
5 bottoms-up approach of looking at the full universe with
6 filters on it was what we used for the choice of an
7 alternative, so that's why the difference.

8 Q. Got it. Okay.

9 In paragraph 44 at the end of that paragraph -- 12:28:29

10 A. Uh-huh.

11 Q. -- you say that you "further refined the set by
12 choosing the lowest-cost share class and the oldest
13 share class by inception date among those available for
14 the relevant vintages."

15 Do you see that?

16 A. Yes.

17 Q. I don't understand that.

18 Can you explain?

19 A. Well, you can understand using the lowest cost
20 class; correct? That's not challenging to understand. 12:28:59
21 We wanted to make the assumption that we would -- that
22 the committee would choose the least expensive share
23 class because of the scale of the plan. Okay?

24 Q. All right.

25 A. And then we wanted to make sure that the --

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1 because you have so many different vintages involved in 12:29:25
2 a TDF, we wanted to make sure that the particular share
3 class we were choosing was in existence long enough and
4 therefore met the criteria, the qualitative criteria of
5 the IPS of having been in existence for three years.
6 So, you know, those were two sort of, let's just say,
7 final refinements to what we included in the selection 12:29:57
8 criteria.

9 Q. So -- so what happens if one fund is the lowest
10 cost share class, and a different one is older?

11 A. We will use the lowest cost share class first
12 so long as it has been in existence long enough to
13 capture the vintages we need to capture the bulk of the
14 assets in the TDF. 12:30:28

15 Q. What does that mean, the "bulk of the assets in
16 the TDF"?

17 A. Well, every vintage has a different amount of
18 assets associated with it, and when you get to some of
19 the older or in certain cases depending on the funds
20 being used, the further out into the future vintages,
21 like the 60 or 2065, whatever, different TDFs add new 12:30:52
22 sleeves or new vintages at different times, and
23 different TDFs treat expiring target date funds --
24 meaning, you've past the target date -- differently.
25 Some of them terminate, and the funds automatically roll

1 into a retirement sleeve or a sleeve that is intended to
2 capture the post retirement, I guess I'll call it, 12:31:27
3 experience, and so you have to, you know, carefully look
4 at those issues to make sure that we're looking at
5 apples and apples, and we're looking at comparability
6 between TDFs. So the aging is a secondary concern that
7 we try to filter for. But the share class cost -- 12:31:54
8 meaning, the lowest share cost -- was the primary driver
9 of that final filter.

10 Q. And why was it important to use the lowest cost
11 share class?

12 A. Because fees reduce the net return to
13 participants.

14 Q. And am I right that a higher fee fund will not 12:32:28
15 only have higher fees but as a result will have lower
16 performance and will have worse other metrics,
17 information ratio, Sharpe ratio?

18 MR. BERIN: Object to the form.

19 THE WITNESS: It will have lower net performance,
20 correct.

21 MR. BLUMENFELD:

22 Q. In paragraph 47 of your report -- 12:33:00

23 A. Yes.

24 Q. -- you describe methodology that yields your
25 conclusion that the American Funds Target Date

1 Retirement Fund Series R6 share class should replace the
2 Freedom Funds as of the first quarter of 2017; correct?

3 A. Correct.

4 Q. Okay.

5 And you described this ranked scoring analysis that
6 you utilized?

7 A. Yes. 12:33:30

8 Q. Can you identify any plans in the last 20 years
9 that have used that ranked scoring methodology that you
10 described?

11 A. No.

12 Q. The factors that you considered in your 12:34:00
13 analysis are the expense ratio, yes?

14 A. Yes.

15 Q. Standard deviation on a three-year and
16 five-year basis?

17 A. Yes.

18 Q. Maximum drawdown on a three-year and five-year
19 basis?

20 A. Yes.

21 Q. Analyze the total return on a three-year,
22 five-year basis?

23 A. Yes.

24 Q. Sharpe ratio on a three-year, five-year basis?

25 A. Yes.

1 Q. Alpha on a three-year and five-year basis?

2 A. Yes.

3 Q. Information ratio on a three-year and five-year 12:34:30
4 basis?

5 A. Yes.

6 Q. And the time period that you evaluated was
7 essentially ending as of Q4 2016; correct?

8 A. Correct.

9 Q. Okay.

10 Did you do any analysis of these -- and the funds
11 that you list are the funds that are contained on
12 Table 6 of your report; correct?

13 A. Yes.

14 Q. Okay.

15 Did you do any analysis of the holdings of any of 12:34:57
16 these target date funds?

17 A. No. We didn't dive down into the sort of
18 individual holdings.

19 Q. Okay.

20 Did you look at the glide paths of any of these
21 target date funds?

22 A. We had information from Morningstar that
23 implied what the glide paths were from a to or through
24 standpoint, yes.

25 Q. To or through, but did you look at the glide 12:35:28

1 path as it changed over time for the different funds?

2 A. The answer is yes, in general. It wasn't a
3 major criteria, because as you can tell by looking at
4 the deep dive report, these glide paths are all -- you
5 know, there's no major outliers to them among certainly
6 the deep dive peer group listing, and the same would be
7 true of these. They are more or less similar. They're 12:35:58
8 not exactly the same, but they're more or less similar.

9 Q. You didn't actually include any analysis in
10 your report of the glide path of any of the target date
11 funds that are listed here?

12 A. I didn't include it, but I considered it.

13 Q. Okay.

14 You didn't identify it as materials that you
15 considered in your report either?

16 A. It's not -- it's something that falls into the
17 qualitative considerations of the fund, but it's not a 12:36:29
18 hard output that you can measure easily against
19 different alternative funds. So the answer is so long
20 as it fell within the range of reasonableness for funds
21 of this type, then we considered that sufficient for
22 this exercise of picking the best alternative. 12:36:55

23 Q. Okay.

24 You didn't evaluate the holdings in stocks and
25 bonds of the different target date funds in your

1 analysis that you contain in Table 6 of your report?

2 A. No. That was beyond the scope of what I was
3 asked to do.

4 Q. And you didn't consider holdings in domestic
5 equities versus international equities; correct?

6 A. Correct, correct.

7 Q. And you didn't consider the allocation to large
8 cap stocks or small cap stocks or value stocks or world 12:37:26
9 stocks in your analysis of selecting an appropriate
10 target date fund for the Quanta plan?

11 A. Well, not at a granular level. But keep in
12 mind that the fundamental risk reward characteristics of
13 those different elements that you're quoting will indeed
14 become reflected in all these metrics that we looked at
15 in aggregate. So this type of exercise of selecting
16 among target date funds given the number of vintages 12:37:58
17 involved and given the robustness of the amount of data
18 involved is best done through capturing the aggregate
19 characteristics of risk and reward as evidenced by these
20 criteria that we used in our score card.

21 So I believe all of the most critical elements are 12:38:26
22 captured because I'm not sure that any analyst could
23 look at 12 different funds, as an example, for, you
24 know, 12 different vintages of those funds and the
25 holdings in each of those and come up with a

1 multi-variant conclusion that was any better than using
2 aggregate data. That's why aggregate data is used.

3 Q. And that's why you used aggregate data? 12:39:03

4 A. No. That's why the industry uses aggregate
5 data, and I use aggregate data.

6 Q. Okay.

7 Did you look at the underlying funds in which the
8 various target date funds are invested in?

9 A. No, for the same reason.

10 Q. Okay.

11 So you didn't look to see -- you didn't look to see
12 if any of these target date funds had underlying funds 12:39:28
13 that had underperformed their benchmark on a three-year
14 or five-year basis?

15 A. Not specifically because that would, if they
16 were significant holdings, reflect itself in the numbers
17 that we did look at.

18 Q. Okay.

19 A. Like I said, the aggregate data when you're
20 looking at 12 different vintages across 12 different
21 funds is best done on an aggregated basis using the 12:39:56
22 criteria that we used.

23 Q. And you didn't evaluate how many of the
24 underlying sub-funds in which any of the target date
25 funds are invested did not even have a five-year track

1 record?

2 A. We did not look at track record at that level.

3 We looked at track record for the funds overall.

4 Q. Okay.

5 Did you evaluate the funds that you include as

6 potential alternative funds against the removal criteria 12:40:29

7 that you described in paragraph 31-A, B, C, D, and E?

8 A. No.

9 Q. Just to stick with the American Funds as an

10 example, did you evaluate to see whether the American

11 Funds would have failed the removal criteria you 12:40:58

12 articulate in paragraph 31-A, B, C, D, and E in 2012 or

13 2013 or 2014 or 2015 or 2016?

14 A. No.

15 Q. And you didn't do that for any of the other

16 funds either?

17 A. No. Like I said, it was a two-pronged

18 analysis. We dealt with them separately, and there was

19 no reason for our analysis to do that.

20 Q. Got it. 12:41:29

21 Did you evaluate any of these target date funds

22 with respect to their performance in the second quarter

23 of 2017 or the third quarter of 2017 or the fourth

24 quarter of 2017?

25 A. No. This was a contemporaneous exercise, and

1 we evaluated this right up to the point where we thought
2 we had to make decisions as though we were the committee
3 at that contemporaneous moment.

4 Q. And did you evaluate any of the criteria that 12:41:59
5 you contain in Table 6 with regard to the target date
6 funds in 2018, 2019, 2020, or 2021?

7 A. No.

8 Q. Or '22, '23, '24?

9 A. No. That would be -- that would be biasing the
10 analysis, wouldn't it? How do you make it -- how do you
11 put yourself in the position of a contemporaneous
12 analyst as though the committee had to deal with it in
13 the first quarter of 2017 if you're looking at 12:42:29
14 nonexistent data in the future?

15 Q. Why is it important to focus on the
16 contemporaneous information that would be available as
17 opposed to looking at the information that would be
18 available, say, in 2021 or 2022 or 2023 or 2024?

19 A. It has to do with the purity of the exercise, I
20 believe, and the exercise is to look at this without
21 hindsight bias. And obviously I disagree tremendously 12:42:58
22 with using hindsight bias when you're selecting
23 alternative funds. That would invalidate the exercise,
24 as far as I'm concerned.

25 Q. Did you evaluate the American Funds target date

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1 funds to see if in the second quarter of 2017, for 12:43:27
2 example, they would be subject to removal under the
3 removal criteria that you articulate in paragraph 31-A,
4 B, C, D, and E of your report?

5 A. No.

6 Q. Okay.

7 And so as far as you know, the American Funds, if
8 they were added as of Q1 of 2017, could have been
9 subject to removal under the criteria you articulate in
10 paragraph 31 just a few quarters later?

11 A. Like I said, I didn't do analysis. There are 12:43:59
12 two types of analysis I did not do. I did not run the
13 alternative list against the removal criteria because
14 that was a separate exercise. And I did not use
15 forward-looking data beyond the first quarter of 2017 to
16 analyze any of the alternatives that we selected because
17 that would have introduced hindsight bias, which I think 12:44:24
18 is one of the most invalidating things you can do in
19 this sort of analysis.

20 Q. What if you only use it a little bit?

21 A. I don't think you should --

22 MR. BERIN: Object to form.

23 THE WITNESS: I don't think you should use it at
24 all, period.

25 MR. BLUMENFELD:

1 Q. And if you use it a little bit it ruins the
2 whole analysis?

3 MR. BERIN: Object to the form.

4 THE WITNESS: Yes, it does, actually. It does
5 indeed because you're supposed to be putting yourself
6 into the shoes of the committee at that point in time, 12:44:56
7 and they didn't have access to that information. So
8 yes, you can't cherry-pick information in the future and
9 include it in an analysis and have it be valid on a
10 contemporaneous basis. I believe I called out
11 Mr. Wermers' report for that very issue in my
12 rebuttal.

13 MR. BLUMENFELD:

14 Q. We've been going for a little while, and I'm
15 going to switch to a different document in a minute.

16 Do you want to take a break?

17 A. Well, I wouldn't mind breaking for lunch. I
18 don't care if we do it now or in 15, 30 minutes from 12:45:55
19 now. That doesn't bother me.

20 Q. Why don't we do that now. I forgot, Mr. Marin,
21 you're on the West Coast. Everybody else can stretch
22 their legs a little bit, if that's okay with you, Mat.

23 MR. BERIN: Sure.

24 THE VIDEOGRAPHER: We're going off the record at
25 12:46.

1 (Lunch recess was taken.)

2 THE VIDEOGRAPHER: We are back on the record. The
3 time is 1:17.

4 MR. BLUMENFELD:

5 Q. Mr. Marin, you understand you're still under
6 oath; correct?

7 A. Yes.

8 Q. And you have the same obligation to tell the
9 truth as if you were testifying live in front of a 13:17:58
10 judge?

11 A. Yes.

12 Q. Wonderful.

13 Do you know what "survivorship bias" is?

14 A. Yes.

15 Q. What is it in the context of investments?

16 A. It means that when you're looking at a universe
17 of funds, since some funds drop out for various reasons,
18 performance reasons or because they don't track enough
19 assets, that your collective or aggregate analysis of 13:18:27
20 those funds will always be biased by the funds that
21 stick around, and your historical information about
22 those that perhaps didn't, you know, gets excluded at
23 some point. So it has to do with the way in which the 13:18:58
24 funds are analyzed mathematically and whether they stay
25 in the universe of being analyzed or get removed from

1 the universe.

2 Q. Because, for example, if you're sitting in 2024
3 and looking at investments in 2016 or 2017, if you
4 ignore investments that used to exist in 2016 and 2017
5 but no longer exist now, you're going to skew the
6 results of your analysis because you're not including 13:19:30
7 all of the information that was available at the time;
8 correct?

9 A. Correct.

10 Q. Did you do anything to ensure that the
11 comparator target date funds that you looked at were not
12 subject to concerns about survivorship bias?

13 A. I don't know that we specifically looked at any
14 analysis to indicate levels of survivorship bias, but 13:19:54
15 I'm not aware of any survivorship bias that came up in
16 regard to those funds.

17 Q. You're saying you didn't see any survivorship
18 bias issues, but you didn't look for it either?

19 A. We didn't see any, but I don't believe we had a
20 specific test for survivorship bias, because normally
21 this isn't the type of fund, or these aren't the types
22 of funds when survivorship bias tends to come into play 13:20:28
23 most often.

24 Q. Did you look to see whether there were target
25 date funds in 2016, 2017 that existed then but that

1 don't exist now?

2 A. No.

3 MR. BLUMENFELD: Okay. Mat, could you load up the
4 three-year?

13:20:58

5 Q. While Mat's doing that, and it's getting loaded
6 up, Mr. Marin, in your list of potential alternative
7 funds, you don't include the Freedom Index Funds;
8 correct?

9 A. No, we don't, because we considered them in the
10 broader universe, and they did not meet the criteria for 13:21:27
11 the -- for the filtering process. I've forgotten
12 exactly which filter they triggered, but basically they
13 got filtered out.

14 Q. So your conclusion was they would not be a
15 suitable replacement for the Freedom Funds that were in
16 the plan?

17 A. That was the conclusion we reached.

18 Q. Okay.

19 Mr. Marin, could you look at what's been marked and
20 uploaded as Exhibit 5? Let me know when you have it in 13:21:57
21 front of you.

22 A. I will. I have it up in front of me. 13:22:23

23 Q. Okay.

24 So I want to be clear, this is not a document that
25 you have seen before, but it has data from your report,

1 and I'm going to -- I'm not asking really a question
2 now, but I want to orient you to what this document is.
3 We looked at the S&P Target Date Fund returns that you
4 include in your report specifically with respect to the
5 removal criteria for the Fidelity Freedom Funds in 13:22:58
6 paragraph 31-B.

7 A. Uh-huh.

8 Q. And we looked at the performance of the
9 comparator target date funds that you identify in
10 Table 6 of your report --

11 A. Okay.

12 Q. -- as of December 31 of 2016, and this chart is
13 the three-year annualized returns.

14 A. Okay.

15 Q. Following me so far?

16 A. I am, sure.

17 Q. So this showed that the Allspring target date 13:23:29
18 funds that you consider as potential alternatives to the
19 Fidelity Freedom Funds at 11 of 11 vintages that
20 performed below the S&P Target Date Index as of a
21 three-year basis as of December 31st of 2016.

22 Do you see that?

23 A. Yes.

24 Q. And this shows that the American Century One
25 Choice target date funds that you considered as

1 potential alternative target date funds for the Freedom
2 Funds had eight out of nine target date funds -- that 13:23:59
3 is, 89 percent that performed below the target date
4 funds index.

5 Do you see that?

6 A. Yes.

7 Q. And it shows the American Funds, and it shows
8 that none of them underperformed on a three-year basis
9 compared to the S&P Target Date Index; right?

10 A. Yes.

11 Q. And then you look at the BlackRock Life target
12 date funds, and you see that eight out of nine performed
13 below the index?

14 A. Yes.

15 Q. And just so I'm clear, that means the Allspring 13:24:29
16 target date funds would have been subject to monitoring
17 or removal as of December 31 of 2016 using the criteria
18 that you articulate in paragraph 31-B of your report;
19 correct?

20 A. Well, this is only covering one quarter.

21 Q. Right, it is. That's why I said either
22 monitoring or removal depending whether it's one quarter
23 or five quarters. 13:24:59

24 A. Okay. So for this quarter you're correct.

25 Q. And same with the American Century One Choice?

1 A. Yes.

2 Q. And the same with the BlackRock target date
3 funds?

4 A. Yes.

5 Q. And the Fidelity Freedom Funds are listed there
6 as well and the John Hancock Multi-Manager Funds?

7 A. Correct.

8 Q. Nine out of nine performed below the S&P Target 13:25:27
9 Date Index?

10 A. Correct.

11 Q. And the JP Morgan SmartRetirement Funds, nine
12 out of nine performed below the S&P target date index?

13 A. Yes.

14 Q. And the Nuveen Lifecycle Fund, ten out of ten
15 performed below the S&P Target Date Index?

16 A. Correct.

17 Q. And the Principal LifeTime target date funds,
18 12 out of 12 performed below the S&P Target Date Index?

19 A. Yes.

20 Q. And the Schwab, ten out of ten performed below 13:25:57
21 the S&P Target Date Index?

22 A. Correct.

23 Q. And the T. Rowe Price Retirement, ten out of 11
24 performed below the S&P target date index?

25 A. Yes.

1 Q. And the Vanguard Retirement Funds, 11 out of 12
2 performed below the S&P Target Date Index?

3 A. Correct.

4 Q. Did I miss any of the ones you included in your
5 report as potential target date funds to the Fidelity
6 Funds?

7 A. One, two, three, four, five, six, eight, nine, 13:26:25
8 ten, 11, 12. Let me read them off to you, and you tell
9 me if they're all here.

10 Q. Hold on one second, Mr. Marin. I just want to
11 make sure that you're reading off which document so I
12 can look at the other document.

13 A. I'm reading off Table 6 of my report.

14 Q. Very good, and I will look at Exhibit 5 to your 13:26:59
15 deposition.

16 A. Okay. So American Funds, that's on there, yes.

17 Q. Yes.

18 A. Vanguard TDFs are on there. American Century
19 is on there. T. Rowe Price is on there. BlackRock is
20 on there. Schwab is on there. Allspring is on there.
21 JP Morgan is on there. Fidelity Freedom suite is on
22 there. Principal, did we have Principal on there?

23 Q. Principal is on there. 13:27:30

24 A. Yes, it is. And John Hancock and Nuveen.

25 Q. So that's all of them?

1 A. Yes. That's correct. It covers all of them.

2 Q. Great. Let's go back to Table 6 of your
3 report.

4 The American Funds that you include in Table 6 of 13:27:58
5 your report is a different share class of the American
6 Funds than you include as part of the peer review when
7 you're comparing the performance to the Fidelity Freedom
8 Funds; correct?

9 A. Oh, as I said, the two are different analyses,
10 so if they are different -- if there were different
11 share class, if it was not the lowest price share class,
12 that's not what we included in our alternative review. 13:28:26

13 Q. Okay.

14 And that means that you didn't do a comparison of
15 the Fidelity Freedom Funds in terms of the replacement
16 fund analysis as against the American Funds that were
17 part of the target date deep dive; correct?

18 A. Correct.

19 Q. And you don't know if the Fidelity Freedom 13:29:00
20 Funds that were in the plan actually would have scored
21 better than the American Funds target date funds that
22 were the subject of the target date deep dive; correct?

23 A. Correct.

24 Q. If one of the target date funds that you
25 identify in Table 6 had a collective investment trust

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1 that was available, did you guys analyze that? 13:29:25

2 A. Let me just parse your question again. If
3 you -- Say it one more time. I'll listen more
4 carefully.

5 Q. Let me ask it a little more differently.

6 You said you were looking for the cheapest share
7 class, generally speaking; correct?

8 A. Yes.

9 Q. If there was a cheaper version of a fund in a
10 CIT, did you consider that, or did you limit your
11 analysis to just mutual funds?

12 A. Well, the data gathering was the province of my 13:29:57
13 associates, but my guess is that they would have not
14 considered CITs.

15 Q. Okay.

16 Let's look at the JP Morgan Smart Retirement Funds
17 that you included in your analysis.

18 You included the R6 suite; correct? 13:30:25

19 A. Hold on. If I could find my magnifying glass.
20 This printing is very small.

21 Q. Take your time.

22 A. Yes, R6 suite.

23 Q. Can you go to page 72 of your report, 72 of the 13:30:53
24 PDF?

25 A. All right.

1 Q. So if you're looking at the physical pages,
2 it's page 11 of 86.

3 A. It's in the -- Is it in the data tables or in
4 the pros?

5 Q. It is in Exhibit 3 to your report.

6 A. Sorry. Okay. So I have to go to the online -- 13:31:26
7 the online version. One second. I didn't print off 150
8 pages of data tables. So I'm going to go here and go to
9 Exhibit 01. Correct?

10 Q. It is Exhibit 3.

11 A. Okay. Hold on. 13:31:58

12 Q. But if you're looking at the PDF page numbers,
13 it should be page 72 --

14 A. Wait. You say it's Number 3. Isn't it
15 Number 1?

16 Q. Exhibit 3.

17 A. Oh yes, but it's -- it's Exhibit 0001. Okay.
18 That's the document.

19 Q. Correct.

20 A. And now it's Exhibit 3 of that document.

21 Q. You are correct. Sorry. I misunderstood your
22 question.

23 A. And what page of the 204 are we looking at? 13:32:27

24 Q. 72.

25 A. Okay. One moment. Okay. I've got it. It's

1 listed as Exhibit 3, and it's on page 11 of 86. Is that 13:32:57
2 the right page?

3 Q. It is.

4 A. Okay. And what am I looking at?

5 Q. Line 626.

6 A. 626, JP Morgan Retirement Fund 2015 R6.

7 Q. This is the one you included in your analysis
8 in Table 6; correct?

9 A. Yes, I believe it is.

10 Q. What's the inception date of that fund? 13:33:27

11 A. 11-3-14.

12 Q. That means it didn't pass the criteria that you
13 articulated a little while ago about how you selected
14 the share classes of the funds; correct?

15 A. It does not appear to meet the three-year
16 threshold, so I would have to talk to my analyst as to
17 why that one was selected. 13:33:58

18 Q. And just to be clear about it, let's go back to
19 Table 6.

20 A. In my report?

21 Q. In your report.

22 A. Okay. Okay. 13:34:26

23 Q. The information that you include in Table 6 for
24 the JP Morgan SmartRetirement Fund is not any of the
25 actual metrics for the JP Morgan SmartRetirement R6

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1 suite. It's just how you ranked them.

13:34:58

2 Correct?

3 A. That is what I show in this Table 6, yes.

4 Q. Right.

5 The underlying data is in Exhibit 5 to your report
6 as you indicate in paragraph -- excuse me, not
7 paragraph -- Footnote 44?

8 A. Correct.

9 Q. But because the JP Morgan SmartRetirement R6
10 suite didn't satisfy the three-year test, all of the
11 data that's in Exhibit 5 with respect to the JP Morgan 13:35:29
12 SmartRetirement Fund is going to be the wrong data
13 because it's the data for the wrong share class of the
14 fund; correct?

15 A. Well, like I said, I would have to check with
16 my analyst as to why that passed the test and why it was
17 at the three-year history it was included as the
18 analytical choice for the score card. 13:36:00

19 So my only point is, you're showing me a table that
20 shows an inception date of 11-4-13. Presumably that's
21 correct, but I would want to check with them as to why
22 he included this if that is, in fact, the correct
23 inception date, and therefore it didn't meet the
24 three-year criteria. It might be a reason because
25 there's a lot of data here, and there's a lot of 13:36:28

1 information that I would have to validate or verify with
2 him.

3 Q. Oh, but didn't you do that in preparing your
4 report?

5 A. Yes, we certainly did. We went through
6 everything. But as you can imagine with 150 pages of
7 details, there may have been an error or not, but I
8 don't know without checking with him.

9 Q. Okay.

10 I don't have the chance to depose him. My
11 opportunity is to depose you.

12 So as you sit here today, you don't know if the 13:36:58
13 information that's regarding the JP Morgan
14 SmartRetirement Funds that you include in Table 6 and in
15 Exhibit 5 to your report is right or not?

16 A. I don't know. And if it was -- What I will say
17 is that if it was highlighted and brought up in the
18 rebuttal from Mr. Wermers, then it would have been
19 double-checked by my analyst team, and my analyst team 13:37:27
20 has verified to me, and we have gone over the fact that
21 all of the exceptions that were noted were -- did not
22 change the ultimate outcome of the analysis or my
23 opinions.

24 Q. I'm sorry. You're saying after -- in response
25 to Mr. -- Dr. Wermers' rebuttal report, you did some 13:37:56

1 additional checking?

2 A. Certainly we did. We looked at his report very
3 carefully, and we analyzed all of his criticisms of my
4 report, and this was one of his criticisms or something
5 that he pulled out or said we made a mistake. We
6 checked to see, Number 1, if we had indeed made a
7 mistake, or there was some interpretational difference.
8 And we went through doing the analysis to see if indeed 13:38:28
9 there was a minor error, that that error in any way
10 changed the outcome of the analysis or was significant
11 enough to alter the opinions, and we found none.

12 Q. Okay.

13 But if this wasn't in Dr. Wermers' report, rebuttal
14 report, you don't have any recollection of looking at
15 this question?

16 A. I do not at this moment.

17 Q. Okay.

18 And you don't recall as you sit here today this 13:39:00
19 being an issue that was raised in Dr. Wermers' report?

20 A. He had a 73-page report, so the answer is no, I
21 don't remember. He had many exceptions and many
22 footnotes.

23 Q. Okay.

24 And the exhibit that we looked at before that
25 showed the 2014 inception date for the JP Morgan

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1 SmartRetirement R6 class, that was your original report
2 in this case; correct?

3 A. Yes.

4 Q. Okay. 13:39:28

5 Mr. Marin, can you go to Exhibit 5 to your report?
6 I believe that's one of those things you'll need to look
7 at electronically because it's in approximately page 153 13:39:58
8 of the PDF.

9 A. Okay. I'm going to look for page 153 of the
10 PDF. This is Exhibit 5, yes.

11 Q. Can you turn to specifically page 154? 13:40:27

12 A. Okay.

13 Q. At the top of the page has all of the details
14 that led to the rankings that you include in Table 6 of
15 your report with respect to the JP Morgan
16 SmartRetirement R6 share class; correct?

17 A. Correct.

18 Q. And if you shouldn't have used the R6 share
19 class because it didn't meet the criteria that you
20 articulated to me, then that means the expense ratio 13:41:00
21 information that you included in your analysis would be
22 incorrect?

23 A. Well, it might not be incorrect for the R6 --
24 for the R6 series. What we'd have to do is check to see
25 whether or not the -- There's no reason from this chart, 13:41:25

1 there's no reason to assume that the expense ratios are
2 not the expense ratios for the JP Morgan SmartRetirement
3 R6, the R6 funds. They may -- they should be for that
4 fund. There's no reason to assume they're not for this
5 fund.

6 Q. I understand.

7 But if the JP Morgan SmartRetirement R6 shouldn't 13:41:59
8 have been included in your analysis, then you would pick
9 a different share class of the JP Morgan SmartRetirement
10 target date funds; correct?

11 A. Correct.

12 Q. And the different share class of the JP Morgan
13 SmartRetirement Fund would have a different expense
14 ratio?

15 A. That's correct.

16 Q. And would have different standard deviation?

17 A. Yes. They would have different numbers
18 altogether. I mean, they might be the same, but that
19 would be a coincidence. But generally if it was a 13:42:28
20 different fund, it would have different numbers across
21 the board.

22 Q. And have a different max drawdown?

23 A. Yes.

24 Q. And have a different annualized total return?

25 A. Yes.

1 Q. And have a different Sharpe ratio?

2 A. Yes.

3 Q. And have a different Alpha?

4 A. Yes.

5 Q. And have a different information ratio?

6 A. Yes.

7 Q. Going back up to Table 6. And Mr. Marin, I'll 13:42:50

8 just -- to preview for you, if we go back to Exhibit 5,

9 so if you want to look at Table 6 in the hard copy and

10 then have Exhibit 5 available to you on the screen, that

11 might make things a little easier.

12 A. I have it.

13 Q. Great.

14 As part of your analysis in Table 6, do you do any 13:43:24

15 accounting as to whether one of these target date funds

16 is actively managed versus passively managed?

17 A. No.

18 Q. Do you do any analysis or accounting or factor

19 in how long the management has been associated with any

20 one of these particular target date funds?

21 A. Not in this score card, no.

22 Q. And what about Morningstar ratings?

23 A. No.

24 Q. What about whether there are investor inflows 13:43:57

25 or outflows from any of those target date funds?

1 A. No.

2 Q. And am I right that this scoring methodology
3 doesn't really bring any judgment to bear. It just
4 spits out the number, and the funds with the highest
5 number is the one that you believe should be the
6 alternative?

7 A. Yes, with an exception. The exception is that 13:44:26
8 we looked at qualitative issues that were readily
9 identified in the IPS and considered them for all of
10 these alternative funds. We merely did not quantify
11 them into this score card. If we saw anything that was
12 disqualifying, we would have eliminated it. 13:44:57

13 Obviously the target date exception you've made on
14 the R6 JP Morgan fund has to be checked, but generally
15 speaking there was nothing about any these funds that
16 would have disqualified them from inclusion in this
17 score card listing.

18 Q. And do you articulate anywhere in your report
19 what qualitative issues you looked at to evaluate that
20 all of these funds were ones that didn't present any
21 qualitative concerns? 13:45:30

22 A. I discussed the qualitative review aspects in a
23 couple of places in the report, in the pros, yes.

24 Q. Show me where.

25 A. Well, you can easily do it if you just submit a

1 word search using the word "qualitative," and it will
2 pop right up, and it's going to be a little harder for
3 me to pluck it out without that.

4 Q. One place is paragraph 50.

13:46:00

5 A. Okay. So you have them. So you're saying
6 paragraph 50. Okay. Yes.

7 Q. But all you say there is that the American
8 Funds have an absence of qualitative concerns.

13:46:30

9 A. Correct.

10 Q. You don't articulate what concerns you looked
11 at or evaluated or what about them was not concerning.

12 A. Well, like I said earlier in the report, in the
13 pros, I discuss the qualitative issues. If you give me
14 a moment, I will find it.

15 Q. Sure.

13:46:56

16 A. Okay. So in paragraph 25 I say that "The
17 enumerated qualitative relate to the regulatory context
18 and reputation of the investment manager, the degree of
19 diversification, the scale of the fund, assets under
20 management, and its general usefulness to participants."

21 Q. That's what you're talking about?

13:47:27

22 A. Well, that's the qualitative elements that are
23 called out in the IPS, I believe.

24 Q. And that's fine.

25 But you're saying you looked at all of those issues

1 for every one of the target date funds that you identify
2 in Table 6?

3 A. That was the approach that we used, yes.

4 Q. And I want to be clear on this because you have
5 said "we" sometimes, and I understand you had people
6 doing data checking.

7 Did you look at the qualitative criteria that you 13:47:58
8 list in paragraph 25 for all of the target date funds?

9 A. Yes, we did.

10 Q. Did you, Mr. Marin?

11 A. Well, "we" includes me, doesn't it?

12 Q. I don't know. I want to know what you did, not
13 what somebody on your team did, because if somebody on
14 your team did it and just reported to you thumbs up,
15 we're all good, that's different than if you looked at
16 these criteria for all of the target date funds.

17 A. I looked at all of the qualitative criteria 13:48:26
18 that was available to me for these individual funds that
19 we reviewed, yes.

20 Q. Including the reputation of each investment
21 manager?

22 A. Yes.

23 Q. And your conclusion was that all of the
24 investment managers had a good reputation?

25 A. Yes.

1 Q. The degree of diversification you also looked
2 at?

3 A. Yes.

4 Q. And you concluded that all of these target date
5 funds had a good degree of diversification?

6 A. Yes.

7 Q. And you also looked at general usefulness to 13:48:58
8 participants?

9 A. Yes.

10 Q. And you concluded that all of these target date
11 funds had general usefulness to participants?

12 A. Yes.

13 Q. Could you go, sir, back to Exhibit 5 to your 13:49:47
14 report? Sorry, Mr. Marin. It's your Deposition
15 Exhibit 1. 13:49:56

16 A. Deposition Exhibit 1. Okay, and Exhibit 5 of
17 that report?

18 Q. Correct, which starts on page 152.

19 A. I have it in front of me.

20 Q. Great.

21 This is again the analysis that you did that you
22 report the outcome of in Table 6; correct?

23 A. Correct.

24 Q. I didn't see the underlying math. 13:50:28
25 How did you get from the Exhibit 5 to the results

1 in Table 6?

2 A. It was -- Table 6 is a ranking.

3 Q. I know.

4 A. So I'm not sure I understand your question.

5 Q. Did you use a program?

6 Did somebody eyeball it and say this one looks like
7 the best in this category, so I'm going to give it the
8 highest rank, a 12?

9 A. I believe that was done through an Excel
10 spreadsheet that had an optimization model built into 13:51:00
11 it.

12 Q. Got it.

13 Can you read Footnote 1?

14 A. Okay.

15 Q. I'm sorry. I'm looking at page 153 of the PDF.

16 A. I -- You're saying the Footnote 1 annotation 13:51:28
17 under "Expense Ratio"?

18 Q. Correct.

19 A. Okay. I'm looking for where the footnote shows
20 up. I'm just going to keep flipping down in Exhibit 5.

21 There it is. "Expense ratio figures for the potential
22 alternative funds is the prospective gross expense ratio 13:51:58
23 as of July 2024 provided by Morningstar direct."

24 Q. And what page are you looking at?

25 A. That would be your page 164 of 204.

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1 Q. It's internal page 12 of 12 to Exhibit 5.

2 A. 12 to 12, yes.

3 Q. Okay.

4 And this is the methodology you used to evaluate

5 the expense ratios of the different funds? 13:52:28

6 A. The data on the expense ratios on a historical

7 basis was not available to us, so for the purposes of

8 this exercise, as we annotate it here in the report, we

9 use the gross expense ratios as of July 2024 because

10 that was what was available to us. We could not extract

11 the historical expense ratios.

12 Q. Got it.

13 Can you go to -- Let's go to the first one, I

14 guess, back to page 153 of 204. 13:53:19

15 A. Okay.

16 Q. You see the Fidelity Freedom Funds that are

17 listed there in the middle of that page?

18 A. Yes.

19 Q. All right.

20 You know, sir, that these are not the Fidelity

21 Freedom Funds that's were actually in the Quanta plan;

22 correct?

23 A. Correct.

24 Q. And you used the investor share class of the

25 Fidelity Freedom Funds in your analysis here instead of 13:53:57

1 the cheapest share class of the Fidelity Freedom Funds
2 in the analysis in Exhibit 5 and Table 6?

3 A. Yes, we did. We used -- well, we indicate
4 exactly which ones we used because the ticker symbols
5 are right there.

6 Q. Right.

7 And the ticker symbols are not the one in the plan
8 and not the cheapest share class of the Fidelity Freedom
9 Funds either?

10 A. It was not intended to be the one in the plan
11 because the one in the plan we already determined needed 13:54:29
12 to be terminated.

13 And as far as being the cheapest one, this is why I
14 wonder about that JP Morgan situation. It was the
15 cheapest one available that had a track record that
16 needed to meet the criteria.

17 Q. Okay.

18 So you didn't do an analysis to see, using your 13:54:59
19 ranking methodology that you described in your report,
20 to see whether the Fidelity Freedom Funds that were in
21 the plan actually would have scored higher than any of
22 the other target date funds that you were considering as
23 potential alternatives?

24 A. No. That was a separate exercise. We did not
25 include the Freedom Fidelity Funds that were in the plan

1 in this ranking. This was a ranking of alternatives.

2 Q. Got it.

3 MR. BLUMENFELD: Mat, can we upload the document
4 that starts "FISS" in the name?

5 MR. MCKENNA: Yeah, one second. I'll put it now. 13:55:53

6 MR. BLUMENFELD:

7 Q. Yeah. It should be uploading now, Mr. Marin.

8 A. So I'm going to a new document?

9 Q. Yes.

10 A. Hold on. This is document 0006? 13:56:23

11 Q. It is.

12 A. Okay. Downloading it. All right. I have
13 this.

14 Q. Great.

15 So before you look at this specific document, could
16 you go back to your paper copy of your report, 13:56:57
17 specifically paragraph 2-A?

18 A. Paragraph 2-A. All right.

19 Q. You see in paragraph 2-A you say that you were
20 asked to "review and evaluate the Fidelity Freedom
21 Funds," open parentheses, open quote, "Freedom Funds,"
22 closed quote, closed parentheses, "a suite of 14 target 13:57:28
23 date funds" with a footnote?

24 A. Yes.

25 Q. Okay.

1 That footnote is citing to a Fidelity website;
2 correct?

3 A. Correct.

4 Q. We downloaded that website and printed it.
5 That's what this exhibit is.

6 A. Okay.

7 Q. Do you have it in front of you?

8 A. I do.

9 Q. Can you identify for me on this document which 13:57:54
10 Fidelity Freedom Funds you include in your analysis in
11 Table 6 of your report?

12 A. My answer to that is I would need to check with
13 my analyst, but I can probably go through this and look
14 for the symbols and find the ones that I included. You
15 want me to go through that? That will take some time by 13:58:25
16 the size of this report.

17 Q. I suspect you could do it pretty quickly,
18 because if you could find one, the others will probably
19 be pretty close by.

20 A. Okay. Then I got to get out of this exhibit,
21 go to the other exhibit, get the reference number, so
22 hold on.

23 Q. Tell you what, Mr. Marin. I'll make it easier
24 for you. Let me go to Exhibit 5 of your report --

25 A. Okay.

1 Q. -- and I'll give you the Fidelity Freedom 2030
2 Fund that you include in your analysis in Exhibit 5 and 13:59:00
3 in Table 6 to your report. That ticker symbol is
4 "FFFEX."

5 A. "FFFEX." Okay. So -- and I'm looking for a
6 2030; correct?

7 Q. Correct.

8 A. I don't see it. Could it be "FFKEX"? 13:59:56

9 Q. No. I can give you the 2050 fund. I can give
10 you the 2015 fund. 14:00:28

11 A. So again, I would have to talk to my analyst,
12 but I don't see it here unless it is mistyped as
13 "FFKEX," in which case I see it.

14 Q. Okay.

15 Let's -- Sticking with this document that you're 14:01:00
16 looking at now, could you turn to PDF page 5 of 10?

17 A. Got it.

18 Q. You see there's a Fidelity Freedom 2015 Fund
19 Class K6, for example?

20 A. Yes.

21 Q. And the inception date on that fund is 2003?

22 A. Yes.

23 Q. And the fees on that fund are 26 basis points 14:01:29
24 as of June 30th of 2024?

25 A. Well, let's just see. Does it say the date of

Page 175

1 the fees in the footnote?

2 Q. It's the date of the document.

3 A. Okay. Fine. Then that's what it is, sure.

4 Q. That was for the 2015 fund -- correct? -- 26 14:02:00

5 basis points?

6 A. If the Freedom Fidelity -- Fidelity Freedom
7 2015 Fund Class K6 shows 26 basis points, yes.

8 Q. Okay.

9 Now, could you go back to Exhibit 5 of your report?

10 This is -- sorry, Mr. Marin. You have to use the
11 electronic version.

12 A. Got it.

13 Q. Okay. 14:02:32

14 A. So I'm going back to Exhibit -- give me the
15 page number again of 204.

16 Q. 153.

17 A. Okay. I've got 153. I've got Fidelity, yes. 14:02:53

18 Q. Fidelity Freedom 2015 Fund that you utilized in
19 your report had an expense ratio of 52 basis points;
20 correct?

21 A. Yes.

22 Q. Okay.

23 I want to switch gears now a little bit, Mr. Marin. 14:03:26

24 MR. BLUMENFELD: Alec, I don't remember how long
25 we've been going, if you want to take a break;

1 otherwise, we can keep going.

2 MR. BERIN: Why don't we take a short break now. I
3 think we've been going 50 minutes or so.

4 THE VIDEOGRAPHER: Going off the record. The time
5 is 2:03.

6 (A recess is taken.)

7 THE VIDEOGRAPHER: We are back on the record. The 14:12:31
8 time is 2:12.

9 MR. BLUMENFELD:

10 Q. Mr. Marin, you understand you're still under
11 oath?

12 A. Yes.

13 Q. And you have the same obligation to tell the
14 truth as if you were testifying live in front of a judge
15 or a jury?

16 A. Yes.

17 Q. Great.

18 Mr. Marin, do you know what "revenue sharing" is?

19 A. Yes.

20 Q. In connection with mutual funds and retirement
21 plans? 14:12:59

22 A. Yes.

23 Q. Okay. Great.

24 So I want you to assume that the Fidelity Freedom
25 Funds that were in the plan paid revenue sharing that

1 covered all of the plan's recordkeeping fees.

2 A. Okay.

3 Q. And if the plan switches or had switched to the
4 American Funds, the plan would have to pay for those
5 recordkeeping fees separately.

6 Do you understand what I'm asking you to assume?

7 A. Yes.

8 Q. Okay.

9 How would you factor that into your analysis in
10 either paragraphs 31 or in the fund-selection criteria
11 that's reflected in Table 6 of your report?

12 A. Well, my general sense about revenue-sharing
13 plans is that they are very murky, and they come up 14:13:54
14 mostly because of 12b-1 fees which are distribution fees
15 which don't really apply in the case of retirement plans
16 in the same way they do for other distributors. That's
17 what gives rise to this, quote unquote, rebate that's
18 received.

19 There is only one reference in the IPS to revenue
20 sharing, and it basically just makes the statement that 14:14:26
21 revenue sharing has to be fully disclosed, and there is
22 no disclosure that I have seen anywhere in the IPS as to
23 how they should be handled, and there's no disclosure in
24 any of the quarterly reports from the consultants as to
25 how they would be incorporated.

1 So for purposes of this analysis and to do the
2 monitoring work, I see no way to incorporate them fairly 14:14:59
3 because it is a murky area, and I don't know what's
4 happened to the fees. They may or may not have been
5 applied to the benefit of participants. They may or may
6 not have been disclosed adequately to the committee.
7 Therefore, for purposes of this analysis, there was no
8 way they should have been or could have been included in
9 the analysis. 14:15:30

10 Q. Okay.

11 When you say you don't know how the revenue sharing
12 was applied here, why don't you know?

13 MR. BERIN: Object to the form.

14 THE WITNESS: Because there's no indication of it
15 on the documentation evidence that has been shared with
16 me.

17 MR. BLUMENFELD:

18 Q. And so if you looked at the deposition
19 testimony, you might know how the revenue sharing was 14:15:57
20 handled?

21 MR. BERIN: Object to form.

22 THE WITNESS: I didn't look at the depositions, so
23 I can't say.

24 MR. BLUMENFELD:

25 Q. Okay.

1 And if you looked at the recordkeeping agreement,
2 you might know how the revenue sharing was handled?

3 MR. BERIN: Object to form.

4 THE WITNESS: Again, I don't know because I haven't
5 looked at the recordkeeping agreement.

6 MR. BLUMENFELD:

7 Q. Okay.

8 Do you have an understanding as to how other plans
9 address the concept of revenue sharing might pay for
10 recordkeeping fees that would have to be paid for
11 elsewhere?

14:16:29

12 MR. BERIN: Object to form.

13 THE WITNESS: Not necessarily. I think that varies
14 from fund to fund, so I don't know. And more
15 importantly, I don't know how they would or wouldn't
16 incorporate that into the performance analysis.

17 What I do know is that in this instance, the
18 quarterly reports which are provided by the investment
19 manager or the investment consultant don't incorporate
20 them or call them out in any way to tell whether they
21 are or not, you know, blended in somehow into the
22 overall picture, so I don't know how they could be
23 utilized for this analysis.

14:16:56

24 MR. BLUMENFELD:

25 Q. Okay.

1 What about in Table 6?

2 A. What about Table 6?

3 Q. Where you're identifying a suitable replacement
4 investment option instead of the Fidelity Freedom Funds.

5 A. Once again, I don't know. Like I said, those 14:17:29
6 are individually negotiated and individually arranged,
7 like I said, some murky arrangements.

8 Q. You know there are entire lawsuits about how
9 plans utilize revenue sharing; correct?

10 A. No, I don't know. That's not something I'm
11 aware of.

12 Q. Oh, okay.

13 You know that plans can select different share
14 classes of investment options that pay different amounts
15 of revenue sharing? 14:17:59

16 A. I know that plans can pick different amounts,
17 different share classes for sure. I don't know how much
18 relevance the revenue share has or hasn't because that
19 would depend on the individual discussions.

20 Q. What does that mean, "individual discussions"?

21 A. Meaning the discussions when the plan is making
22 its selection.

23 Q. Right.

24 But you are, in Table 6, are purporting to make the
25 selection that the Quanta plan fiduciaries should have 14:18:26

1 made as of January 1 of 2017; correct?

2 A. I -- yes, and I can only use the information
3 that is available to me in this case through Morningstar
4 to make those determinations, and that information is
5 not made available in a quantitative way.

6 Q. Got it.

7 And so to be more maybe blunt about it, if the
8 Fidelity Freedom Funds had received revenue sharing that
9 equaled \$5 million per year -- and I'm not saying they 14:19:00
10 did, but if they did, and the American Funds target date
11 funds didn't receive any revenue sharing at all, that
12 would be something that would need to be accounted for
13 in any analysis as to whether the plan was better off in
14 the American Funds or the Fidelity Freedom Funds;
15 correct?

16 MR. BERIN: Object to the form.

17 THE WITNESS: If there's an arrangement that is
18 negotiated individually for a given fund to provide some 14:19:28
19 incremental rebate to the -- that changes the expense
20 ratio of the fund on a net basis, that should be a
21 relevant factor to be included. But again, I question
22 whether or not it can be included, and if so, why isn't 14:19:55
23 it included in the numerical assessment being used by
24 all the people that evaluate universes of funds and that
25 consultants use to make advisory reports to their

1 clients like Quanta.

2 MR. BLUMENFELD:

3 Q. I want to make sure, Mr. Marin. You said, I
4 think, that if there is revenue sharing it is something
5 that should be considered, and that is relevant, but you 14:20:27
6 don't understand why consultants don't do so?

7 MR. BERIN: Object to the form.

8 THE WITNESS: That's not exactly what I said. What
9 I said was it's hard to tell how revenue sharing is
10 handled. And the reason it's called out the way it is
11 in the IPS is that this qualifies as what I characterize
12 as a murky arrangement, and it's murky in several ways. 14:20:58
13 It's murky about exactly how it's handled, where the
14 funds go, what it offsets, who gets the benefit of it.
15 That's why it's called out that way, and then what
16 effect it has on the decision-making process.

17 And it is so confused and potentially arbitrary and
18 potentially inconsistent from one time period to the
19 next because it's governed by contract law here with the 14:21:30
20 funds not governed by their requirement to report their
21 results in a way that's consistent with what the
22 consultant uses to do its evaluation. I think it's very
23 challenging to include it in an analysis and falls
24 almost more as a qualitative issue than a quantitative
25 issue, and that's why it's not included in the 14:21:59

1 quantitative analysis.

2 MR. BLUMENFELD:

3 Q. And did you include that in the quantitative
4 analysis?

5 A. No, because there wasn't sufficient information
6 to do that on these funds.

7 Q. When you say "there wasn't sufficient
8 information to do that on these funds," are you
9 referring to funds that you include in Table 6?

10 A. Yes.

11 Q. You know there was sufficient information with
12 respect to the Fidelity Freedom Funds that were in the
13 plan?

14 MR. BERIN: Object to the form.

15 THE WITNESS: The information I was given to do my
16 analysis did not include revenue-sharing information.

17 MR. BLUMENFELD:

18 Q. Got it.

19 And you know that Dr. Wermers included information
20 about revenue sharing on the Fidelity Freedom Funds and
21 on the American Funds and on the T. Rowe Price Funds and
22 on the JP Morgan Funds; correct?

23 A. I saw in his rebuttal that he included more 14:22:57
24 revenue-sharing information than I was aware of, and I
25 again hadn't identified it as an issue because it didn't

1 appear in anything other than that one statement in the
2 IPS that I referenced.

3 Q. You know that Dr. Wermers also included
4 revenue-sharing discussion related to the American
5 Funds, the T. Rowe Price Funds, JP Morgan Funds, and the 14:23:30
6 Freedom Funds in his initial report?

7 A. I would have to go back and look at his initial
8 report. I read it, reviewed it quite a while ago.

9 Q. Why don't you do that? That's Exhibit 3 to
10 your deposition. 14:23:49

11 MR. BERIN: You're looking at a particular page?

12 MR. BLUMENFELD: Yeah. I'm just waiting for
13 Mr. Marin to pull it down. Sorry, Alec. It's PDF
14 page 41.

15 THE WITNESS: Is it Exhibit 003, did you say?

16 MR. BLUMENFELD:

17 Q. It is.

18 A. Okay. I have that up right now. Which page am 14:24:27
19 I looking at?

20 Q. Page 41 of 200 of the PDF.

21 A. Okay. I'm on page 41.

22 Q. Do you see Table 3?

23 A. I do.

24 Q. And that's Dr. Wermers' discussion of revenue
25 sharing; correct?

1 A. Oh yes.

2 Q. Part of it?

3 A. Very good. I see it.

4 Q. You didn't respond to that or disagree with any

5 of that in your rebuttal report; correct? 14:24:59

6 A. That's correct.

7 MR. BLUMENFELD: Okay. Mat, can we load up the
8 Complaint?

9 MR. McKENNA: Yeah. Just one second. Should be 14:25:11
10 available now.

11 MR. BLUMENFELD:

12 Q. Mr. Marin, can you download or open the
13 complaint which has been marked as Exhibit 7 to your
14 deposition? 14:25:53

15 A. I've got it.

16 Q. Great. The Complaint is a document that you
17 considered in forming the opinions that you express in 14:26:28
18 your report; correct?

19 A. Yes.

20 Q. Can you turn to paragraph 24?

21 A. Okay.

22 Q. In the middle of that paragraph there's a
23 sentence that says, "All TDFs are inherently actively 14:26:56
24 managed because managers make changes to the allocations
25 to stocks, bonds, and cash over time."

1 Do you see that?

2 A. Yes.

3 Q. You don't in your report express an opinion on
4 that issue at all; correct?

5 A. Correct.

6 Q. Paragraph 25, could you turn to that, please?

7 A. I've got it.

8 Q. The second sentence of that paragraph says that

9 "Fidelity Management & Research Company, Fidelity, is 14:27:26
10 the second largest TDF provider by total assets."

11 Do you see that?

12 A. Yes.

13 Q. And you know, in fact, that that's true?

14 A. Again, I don't have the data in front of me,
15 but it sounds true, yes.

16 Q. And you also know that the Fidelity Freedom
17 Funds are the largest target date funds that Fidelity
18 offered during this time period --

19 A. Yes.

20 Q. -- correct? Okay.

21 The next sentence says that "Among its target date
22 offerings, Fidelity offers the riskier and more costly
23 Freedom Funds -- which it calls the active suite."

24 Do you see that?

25 A. Yes.

1 Q. And then it goes on to say "the less risky and
2 less costly Freedom Index Funds --" which the Complaint
3 calls the index suite.

4 Do you see that?

5 A. Yes.

6 Q. And you did not compare the risk or the cost of
7 the Fidelity Freedom Funds, which the Complaint called 14:28:30
8 the active suite, against the Fidelity Index suite;
9 correct?

10 A. That's correct. That was outside my scope.

11 Q. Well, it was outside your scope because you
12 decided not to include the Freedom Index Funds in any of
13 your analyses?

14 A. There were reasons why the Freedom Index Fund
15 didn't qualify. That would be the only reason why they 14:28:59
16 weren't considered in my analysis.

17 Q. What I'm asking, sir, that was a decision, a
18 judgment call that you made, not something that
19 Plaintiff's Counsel told you to do?

20 A. That's correct.

21 Q. Okay.

22 Towards the bottom of paragraph 25, I think it's
23 the last sentence, the Complaint alleges "Defendants 14:29:28
24 should have considered the merits and features of all
25 available TDF options, but they instead failed to

1 compare the active and index suites as well as other
2 available TDFs, including actively managed TDFs that
3 offer expected returns sufficient to justify the
4 associated costs and risk."

5 Do you see that?

6 A. Yes.

7 Q. You saw in the target date deep dive that 14:29:56
8 Quanta did consider the merits and features of a bunch
9 of different TDF options; correct?

10 A. Yes. Well, when you say "considered," they
11 looked at them angly. I don't know if they considered
12 them as in purchasing them or adopting them, but they
13 certainly had that data made available to them by
14 Ascend.

15 Q. And -- That's fine. Good.

16 And then the Complaint also says, "they instead 14:30:27
17 failed to compare the active and index suites."

18 Do you see that?

19 A. Are we still on "25"?

20 Q. We are.

21 A. Oh yes, "but they instead failed to compare the
22 active --" okay. Yes, I see it.

23 Q. And you also did not compare the active and
24 index suites; correct?

25 A. I did not.

1 Q. Okay.

2 And this paragraph says, "Defendants should have
3 considered the merits and features of all available TDF
4 options."

5 But you actually didn't consider all TDF options 14:30:59
6 either; correct?

7 A. For purposes of the alternative selection?

8 Q. Correct.

9 A. We looked at the full universe available on
10 Morningstar and then eliminated them using those filters
11 that I mentioned before.

12 Q. The only ones whose performance you looked at
13 was 12 of them; correct?

14 A. Only those which made it through the filtering 14:31:29
15 process, correct. What I'm saying is, that was not
16 arbitrary decision. It was, you know, a data-management
17 decision.

18 Q. Can we go to paragraph 29? 14:31:55

19 A. Okay.

20 Q. The first sentence of paragraph 29 says, "The
21 active suite and the index suite are sponsored by the
22 same investment management company and share a
23 management team."

24 Do you see that?

25 A. Yes.

1 Q. You know that that's true; correct?

2 A. Yes.

3 Q. Okay.

4 The next sentence says, "But while the active suite
5 invests predominantly in actively managed Fidelity
6 mutual funds, the index suite places no assets under 14:32:26
7 active management and instead invests in Fidelity funds
8 that simply track market indices."

9 Do you see that?

10 A. Yes.

11 Q. And there's a Footnote 4 there too; correct?

12 A. Yes. "Per Morningstar, the active suite's
13 underlying holdings are 88.8 percent actively managed by
14 asset weight."

15 Q. Paragraph 29 also said, "The active suite is
16 also dramatically more expensive than the index suite";
17 correct?

18 A. Correct.

19 Q. And you didn't evaluate that; right? 14:32:57

20 A. Well, we did not look at the index suite
21 because it didn't meet the criteria.

22 Q. Right.

23 So you didn't look to see whether the active suite
24 was dramatically more expensive than the index suite?

25 A. I did not analyze that statement, no.

1 Q. Okay.

2 You didn't analyze whether it's true or not?

3 A. Correct.

4 Q. Okay.

5 And you also didn't analyze whether the American

6 Funds target date funds were also dramatically more 14:33:27

7 expensive than the index suite?

8 A. Say that one one more time.

9 Q. You didn't evaluate whether the American Funds
10 target date funds were also dramatically more expensive
11 than the index suite?

12 A. No, I did not.

13 Q. You didn't analyze whether any of the target
14 date funds that you evaluated in your Table 6 were
15 dramatically more expensive than the index suite?

16 A. If for some reason the index suite did not make 14:33:58
17 it through the filters, then that did not occur.

18 Q. As you sit here today, you don't know why the
19 index suite didn't make it through the filters?

20 A. I would have to talk to my analyst, but I don't
21 know of any reason why other than one of the mechanical
22 filters kicked it out of the system.

23 Q. The next sentence -- the next part of the
24 sentence, "the active suite is riskier in both its
25 underlying holdings and its asset-allocation strategy." 14:34:26

1 Do you see that?

2 A. Yes.

3 Q. You did not evaluate that issue either;
4 correct?

5 A. No.

6 Q. No, you did not?

7 A. No, I did not.

8 Q. And you also didn't evaluate whether the
9 American Funds target date funds, for example, had
10 underlying holdings in an asset-allocation strategy that
11 were riskier than the Fidelity Index target date funds?

12 A. No, I did not.

14:35:00

13 Q. Okay.

14 Paragraph 30 says that "The active suite chases
15 returns by taking levels of risk that render it
16 unsuitable for the average retirement investor including
17 plan participants."

18 Do you see that?

19 A. Yes.

20 Q. Did you evaluate whether that was true?

21 A. No. Wasn't relevant to my analyses.

14:35:29

22 Q. The next sentence says, "At first glance the
23 equity glide paths of the active suite and index suite
24 appear nearly identical."

25 Do you see that?

1 A. Yes.

2 Q. You didn't evaluate that either; correct?

3 A. No.

4 Q. And you didn't evaluate whether the American
5 Funds target date funds also had a glide path that was
6 nearly identical to the Fidelity target date funds?

7 A. I did not. 14:35:59

8 Q. Okay.

9 The next sentence says, "But the active suite
10 subjects its assets to significantly more risk than the
11 index suite through multiple avenues."

12 Do you see that?

13 A. Yes.

14 Q. Okay.

15 You didn't evaluate whether that was true either;
16 correct?

17 A. Correct.

18 Q. The next sentence says, "At the underlying fund
19 level, where the index suite invests only in index funds
20 that track market indices, the active suite primarily 14:36:30
21 features funds with a manager deciding what securities
22 to buy and sell and in what quantities."

23 And again, you didn't evaluate that?

24 A. No.

25 Q. No, you did not?

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1 A. No, I did not.

2 Q. Mr. Marin, could you look at paragraph 33? 14:36:45

3 A. Okay.

4 Q. In paragraph 33 the Complaint alleges, "At all 14:37:32

5 times across the glide path, the activity suite's top

6 four domestic equity positions were and are in Fidelity

7 Series Funds created for exclusive use in the Freedom

8 Funds."

9 Do you see that?

10 A. Yes.

11 Q. And then it goes on to say that "three of which

12 have dramatically trailed their respective indices over

13 their entire expected lifetimes."

14 Do you see that?

15 A. Yes. 14:38:00

16 Q. You didn't analyze that in your report;

17 correct?

18 A. No.

19 Q. No, you did not?

20 A. No, I did not.

21 Q. Okay.

22 The next sentence specifically talks about the

23 large cap stock Fund.

24 Do you see that?

25 A. Hold on a second. Is this still on page 14?

1 Q. Yeah.

2 A. The stock, large cap value funds.

3 Q. Not that one yet. The first one was the large 14:38:29
4 cap stock funds.

5 A. Oh yes. Okay. Go ahead.

6 Q. You didn't evaluate whether the sentence that
7 is contained there about the large cap stock funds was
8 true or not?

9 A. I did not.

10 Q. And it didn't matter to your analysis?

11 A. No, it did not.

12 Q. It didn't matter to your analysis about whether
13 the Freedom Funds should be removed from the plan, and
14 it didn't matter to your analysis about which would be
15 the most appropriate target date funds to offer for plan 14:38:58
16 participants?

17 A. No, it did not.

18 Q. The next one is the Stock Selector Large Cap
19 Value Fund.

20 And again, you didn't evaluate the allegations that
21 are in that sentence either; correct?

22 A. No, I did not.

23 Q. Because it didn't matter to your opinions about
24 whether the Freedom Funds should be removed from the
25 plan or what the most appropriate Freedom -- excuse

Page 196

1 me -- what the most appropriate target date funds should
2 be for the plan?

3 A. No, it did not.

14:39:29

4 Q. The next one is the Intrinsic Opportunities
5 Fund.

6 Do you see that?

7 A. Yes.

8 Q. And again, same thing, you didn't evaluate that
9 either in connection with evaluating whether the Freedom
10 Funds should be removed from the plan or what the best
11 investment option would be for plan participants?

12 A. No, I did not.

13 Q. Sorry. Did somebody say something? I know I 14:40:01
14 coughed, so I didn't hear what it was. All right.
15 We'll press ahead.

16 The next sentence says that "While the portfolio of
17 the active suite is diversified among 32 underlying
18 investment vehicles, the three aforementioned funds
19 represent over 19 percent of the 2040 through 2065
20 vintages."

21 Do you see that?

22 A. Yes.

23 Q. You didn't evaluate that issue at all either;
24 correct?

25 A. No, I did not.

14:40:29

1 Q. Paragraph 34 says, "Poor performance of the
2 underlying funds in the active suite is not limited to
3 the largest positions. Of the 25 actively managed
4 Fidelity Series Funds in the active suite portfolio, 11
5 have failed to beat their respective benchmarks over
6 their lifetime."

7 Do you see that?

8 A. Yes.

9 Q. You did not evaluate whether that was true or
10 not?

11 A. No, I did not.

14:40:59

12 Q. Because it wasn't relevant to your opinions
13 about whether the Fidelity Freedom Funds should be
14 removed from the plan, and it wasn't relevant as to what
15 target date options should be offered as investment
16 options?

17 A. That's correct.

18 Q. You also did not evaluate any of the underlying
19 funds for any of the other target date funds that you
20 evaluate in Table 6; correct?

21 A. Say that one more time?

22 Q. I'm going to ask it slightly differently.

23 You also, in Table 6 of your report, identify a
24 number of other target date funds; correct?

14:41:30

25 A. Correct.

1 Q. You didn't evaluate the performance of any of
2 the underlying funds in any of those target date funds
3 to see how many of them underperformed their benchmarks
4 over their lifetimes or over three years or five years
5 or any other time period?

6 A. No, I did not.

7 Q. Paragraph 35 says that "As of the start of the
8 class period, several of the underlying funds used
9 within the active suite portfolio lacked performance 14:42:00
10 history sufficient to support a meaningful analysis."

11 Do you see that?

12 A. Yes, I do.

13 Q. You didn't evaluate whether that was true
14 either?

15 A. No, I did not.

16 Q. And then it goes on to say, "Accordingly, no
17 prudent fiduciary could have appropriately evaluated
18 these funds."

19 You didn't evaluate that either?

20 A. No, I did not.

21 Q. The next sentence continuing into the chart
22 says, "Indeed, as illustrated in the table below, 13 of 14:42:27
23 24 funds --" and then there's Footnote 7 -- "failed to
24 meet the basic criteria of at least a five-year
25 performance history -- meaning, almost two thirds of the

1 funds in the active suite portfolio would have failed
2 one of the most basic fiduciary requirements."

3 Do you see that?

4 A. I do.

5 Q. You didn't evaluate whether any of that was
6 true?

7 A. I did not.

8 Q. And none of that matters to the opinions that
9 you expressed in your report about whether the Fidelity
10 Freedom Funds should be removed as investment options or 14:43:00
11 what target date options should be offered to plan
12 participants; correct?

13 A. No, I did not.

14 Q. And you also did not evaluate, for example,
15 whether the American Funds had a lot of underlying funds
16 that lacked a five-year performance history?

17 A. No, I do not.

18 Q. And the same with the other target date funds
19 that you include in table 6 of your report, you didn't
20 evaluate whether all of them had underlying funds that 14:43:27
21 had less than a five-year performance history?

22 MR. BERIN: Object to the form.

23 THE WITNESS: I did not do that analysis.

24 MR. BLUMENFELD:

25 Q. Okay. Excuse me.

1 Can you go to paragraph 36?

2 A. Okay.

3 Q. Do you see that in front of you? 14:43:58

4 A. I do.

5 Q. This shows a comparison of the glide path of
6 the Fidelity Freedom Funds against the Freedom Index
7 Funds -- that is, the active suite against the index
8 suite; correct?

9 A. Correct.

10 Q. You didn't do an analysis to see whether this
11 chart that's contained in paragraph 36 was true or not?

12 A. I did not.

13 Q. Paragraph 37 says, "This chart considers only
14 the mix of stocks, bonds, and cash"; right? 14:44:28

15 A. Yes.

16 Q. And then it goes on to say, "A deeper
17 examination of the sub-asset classes of the active
18 suite's portfolio, however, exposes the significant
19 risks its managers take to boost returns."

20 Do you see that?

21 A. I do.

22 Q. And again, you didn't evaluate whether that
23 sentence in paragraph 37 is true or not?

24 A. No, I did not.

25 Q. And you didn't consider or evaluate whether all

1 of the allegations in paragraph 37 were true or not?

2 A. Just reading it through quickly.

14:45:02

3 Q. Take your time.

4 A. No, I did not.

5 Q. Okay.

6 The next sentence in here says, "Across the glide

7 path, the active suite allocates approximately 1.5

8 percent more of its assets to riskier international

9 equities than the index suite and also has a higher

10 exposure to riskier asset classes like emerging markets 14:45:29

11 and high yield bonds."

12 A. Yes.

13 Q. I'm sorry. Say that again?

14 A. Yes.

15 Q. Okay. Great.

16 Do you need a drink of water, Mr. Marin?

17 A. Let me take a drink.

18 Q. I'm going to do the same. You and I have been

19 talking a lot. Alec had it easy.

20 A. Okay. I'm ready.

21 Q. You didn't evaluate whether the active suite 14:45:57

22 had 1.5 percent more of its assets to riskier

23 international equities than the index suite; right?

24 A. No, I did not.

25 Q. And you didn't evaluate whether the active

1 suite had higher exposure to riskier asset classes like
2 emerging markets and high yield bonds?

3 A. No, I did not.

4 Q. And you also didn't evaluate whether the
5 American Funds had 1.5 percent more of its assets to
6 riskier international equities than the Fidelity Freedom
7 Funds?

8 A. No, I did not.

14:46:29

9 Q. And you also didn't evaluate whether the
10 American Funds target date funds had a higher exposure
11 to riskier asset classes like emerging classes and high
12 yield bonds than the Fidelity Freedom Funds?

13 A. No, I did not.

14 Q. Paragraph 38 of the Complaint says that the
15 active suite managers were encouraged to participate in
16 active asset allocation.

14:47:00

17 Do you see that?

18 A. Yes.

19 Q. Did you evaluate whether that was true?

20 A. No, I did not.

21 Q. Did you evaluate whether all of the other
22 target date funds that you include in Table 6 of your
23 report also engaged in the same asset allocation as the
24 Fidelity Freedom Funds?

14:47:29

25 A. Not to the way -- to the extent it's indicated

1 here in Number 38.

2 Q. Did you do it at all?

3 A. Well, we're talking about glide path now, and
4 evaluating the glide path is something, as I said 14:47:56
5 before, we looked at to see what the glide paths looked
6 like relative to one another. And therefore, there was
7 some assessment made that they did not create any
8 outlier glide paths that would have created a problem or
9 disqualified them from consideration.

10 Q. As far as you were concerned, the glide paths
11 on all of the target date funds were close enough that 14:48:26
12 it didn't signal that one was any better or worse than
13 any other?

14 A. Not in a meaningful way, correct.

15 Q. Okay.

16 The next sentence in paragraph 38 describes a March
17 2018 Reuters report.

18 Do you see that?

19 A. Yes, "Fidelity freedom, investors, lost
20 confidence in the active suite." Yes, I see that. 14:49:00

21 Q. And you don't discuss or rely on or consider
22 that March 2018 Reuters report in your analysis at all;
23 correct?

24 A. No. No, I did not.

25 Q. And that's because it didn't affect your

1 opinions about whether the Fidelity Freedom Funds should
2 be removed from the plan or what the best target date
3 funds would be to offer to plan participants would be?

4 A. No. So long as the amount of the asset change 14:49:28
5 was -- would not disqualify the funds in any way from
6 the size criteria, the answer is no.

7 Q. One sentence down says, "While many TDF
8 managers increase their exposure to riskier investments
9 in an effort to improve returns, the president of
10 research firm Target Date Solutions cautions that the 14:49:57
11 active suite has gone further down this path than its
12 peers."

13 A. I do.

14 Q. Did you relate whether that was true or not?

15 A. No, I did not.

16 Q. And it didn't matter to the opinions that you
17 expressed in this case; correct?

18 A. Correct.

19 Q. You also didn't evaluate whether the American
20 Funds increased their exposure to riskier investments
21 even more than the Fidelity Freedom Funds; correct?

22 A. Correct.

23 Q. Paragraph 39 of the Complaint, could you turn 14:50:39
24 to that, sir?

25 A. I have it.

1 Q. Great.

2 In paragraph 39 Plaintiffs allege that, "Far from
3 being the," quote, "lifetime saving solution Fidelity
4 promotes, because its funds assume more risk, the active
5 suite exposes investors to significant losses in the 14:50:59
6 event of market volatility like the downturn experienced
7 during the COVID-19 pandemic."

8 Do you see that?

9 A. I do.

10 Q. Did you evaluate that?

11 A. No, I did not.

12 Q. Can you turn to paragraph 44? 14:51:17

13 A. Okay.

14 Q. Paragraph 44 alleges that "The flow of funds to
15 or from target date families is one indicator of the 14:51:57
16 preferences of investors at large."

17 Do you see that?

18 A. Yes.

19 Q. Did you offer an opinion on that in your
20 report?

21 A. I did not.

22 Q. Did you evaluate that issue either with respect
23 to the Fidelity Freedom Funds or any of the comparative
24 target date funds?

25 A. No, I did not.

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1 Q. Lower down in paragraph 44 there's a sentence 14:52:33
2 that says, "At the same time, investor confidence in the
3 active suite has deteriorated from 2016 to 2020 while
4 the index suite gained approximately 40 billion in net
5 inflows. The active suite lost an estimated 35 billion
6 in net outflows."

7 Do you see that?

8 A. Yes.

9 Q. You didn't evaluate whether that was true or
10 not; correct?

11 A. I did not.

12 Q. And it didn't matter to your opinion whether 14:52:59
13 the Fidelity Freedom Funds should be removed or what
14 investments would be appropriate for plan participants?

15 A. No, it did not.

16 Q. Mr. Marin, do you have an understanding, sir, 14:53:55
17 as to how many defined contribution retirement plans 14:53:57
18 offer more than one target date suite to participants?

19 A. No, I don't. No.

20 Q. Okay.

21 So you don't know if it's -- if any of them do or
22 if half of them do or if 1 percent of them do?

23 A. I do not.

24 Q. Okay.

25 (Pause in the proceedings.)

1 MR. BLUMENFELD:

2 Q. Mr. Marin, you didn't evaluate any other target 14:56:00
3 date funds except for the ones that are specifically
4 identified in your report; correct?

5 A. Correct.

6 MR. BLUMENFELD: Mat, can we mark the rebuttal
7 report?

8 MR. McKENNA: Yes. One second. 14:56:26

9 THE WITNESS: You want me to call up another
10 report?

11 MR. BLUMENFELD:

12 Q. Yeah. This will be Exhibit 8 to your
13 deposition, Mr. Marin.

14 MR. McKENNA: Should be available now. 14:56:55

15 (Pause in the proceedings.)

16 THE WITNESS: Okay.

17 MR. BLUMENFELD:

18 Q. Can you turn to paragraph 24 of your rebuttal
19 report? 14:57:27

20 MR. BLUMENFELD: Sorry, Alec. Do you have it?

21 MR. BERIN: I do. Thanks for asking.

22 THE WITNESS: I have it.

23 MR. BLUMENFELD:

24 Q. Okay.

25 In paragraph 24 you criticize Dr. Wermers' report

1 for pointing to favorable Morningstar medalist ratings;
2 correct?

3 A. Correct.

4 Q. And you say they "represent the projections of
5 Morningstar's analyst team and analyst commentary on the 14:57:57
6 Freedom Funds"; correct?

7 A. Correct.

8 Q. First of all, do you understand that other plan
9 fiduciaries also use Morningstar medalist ratings in
10 evaluating the investment options that they are
11 including as investment options or considering to
12 include as investment options?

13 A. I don't know that for a fact, but it wouldn't
14 surprise me that somebody else does look at it.

15 Q. Actually, let me ask it the other way. 14:58:29

16 You can't identify any plans that don't use
17 Morningstar as part of their analysis in selecting funds
18 or in monitoring their forms?

19 MR. BERIN: Object to form.

20 THE WITNESS: I cannot.

21 MR. BLUMENFELD:

22 Q. Okay.

23 The second sentence here says that "The medalist
24 ratings are forward-looking projections."

25 Do you see that?

1 A. Yes.

2 Q. What does that mean?

3 A. They are an attempt to predict how a fund will 14:58:55
4 do based on their assessment of the fund. They're
5 projections.

6 Q. Meaning it's how Morningstar believes the fund
7 is likely to do in the future, not based necessarily on
8 how the funds had done in the past?

9 A. Well, presumably they don't have anything but
10 the past or the positioning of the funds to make that
11 consideration. But yes, they are forward-looking
12 projections. 14:59:30

13 Q. And then you go on to say that those medalist
14 ratings "do not necessarily portend good performance";
15 right?

16 A. That's correct.

17 Q. What's the significance of that?

18 A. That's my way of saying that referencing the
19 medalist reports from Morningstar is not a good way to
20 assess the performance, the actual performance that has
21 been incurred by the plan from a given fund that's in 15:00:00
22 the plan.

23 Q. You switched tenses on me there, Mr. Marin, and
24 so I apologize if I'm being dense, but these are
25 forward-looking projections, so of course they're not

1 going to reflect past performance.

2 A. Well, not necessarily so. They're
3 forward-looking projections which are based on
4 something; right? And what they're based on, since no 15:00:30
5 one has a crystal ball, they're based on the prior
6 performance and the structure of the funds as perceived
7 by Morningstar's analyst team that would lead them to
8 conclude what they conclude about the forward-looking
9 possibilities of that fund.

10 Q. Okay.

11 A. I don't think I changed tenses there. 15:00:58

12 Q. When you say they "don't necessarily portend
13 good performance," you cite to the Kiplinger's report;
14 correct?

15 A. Correct.

16 Q. Which says that "the medalist ratings --" at
17 least according to your interpretation of that
18 publication -- "the medalist ratings have been unable to
19 consistently identify funds that outperform"?

20 A. That's what it says, yes.

21 Q. And what's the basis of that?

22 A. Well, the Wermers report is trying to say that 15:01:30
23 the Morningstar medalist ratings are good predictive
24 tools, and the Kiplinger publication would say that
25 hasn't been the case.

1 Q. And what's the significance of that?

2 A. The significance of that is I'm not sure that
3 the use of the Morningstar medalist reports are
4 necessarily helpful to evaluating whether to retain a
5 fund or not, especially since that's not something
6 that's specified in the IPS.

15:02:00

7 Q. Okay.

8 Putting aside the IPS aspect of it, do you have any
9 analysis that said that the medalist ratings that
10 Morningstar uses were worse predictors of future
11 performance than the analysis that you go through in
12 paragraph 31-A through E of your report or in Table 6 of
13 your report? 15:02:27

14 A. Well, "31" does not portend to be a predictive
15 framework. It's an evaluative framework; correct? And
16 so the answer is no, I don't know how to make that
17 comparison you're asking me to make because that's not
18 what I do in the first prong of this analysis. 15:02:59

19 Q. Let's come back to that then. Let's talk about
20 the second part of the analysis.

21 Is the medalist rating better or worse or the same
22 as the analysis that you go through in Table 6 to
23 identify a suitable target date fund for the plan?

24 A. I have not done that assessment, so I have no
25 way of knowing. 15:03:29

1 Q. And more generally, you haven't done an
2 assessment as to whether the methodology that you
3 describe and utilize in Table 6 is actually good at all
4 in predicting which funds are going to be the best funds
5 over a subsequent time period?

6 MR. BERIN: Object to the form.

7 THE WITNESS: I did not -- I did not do a research
8 study that would give me strong empirical evidence as to
9 predictive quality, so the answer is no. 15:03:58

10 MR. BLUMENFELD:

11 Q. Did you do any analysis that would give you any
12 predictive analysis or results?

13 A. Well, I -- What I've said before is that these
14 are time-honored ways in the industry to evaluate the
15 selection process in funds, and they're very consistent
16 with the selection methodology that the IPS calls out, 15:04:25
17 so in that sense I do believe they're a valid way of
18 going about making a selection of alternative fund. And
19 there's no guarantee that they will produce the best or
20 perfect result, but they are well respected ways of
21 evaluating funds for selection.

22 Q. Much like the Morningstar medalist ratings;
23 correct?

24 A. I have no reason to believe that the 15:04:59
25 Morningstar medalist ratings are better or worse than my

1 methodology. All I know is that Kiplinger calls that
2 out as not being particularly valuable as a way of
3 predicting future performance.

4 Q. Got it.

5 Mr. Marin, you did not conclude in your report that
6 the Fidelity Freedom Funds should have been replaced by
7 the Vanguard target date funds; correct?

8 A. That was not our conclusion.

9 Q. And you did not conclude in your report that 15:05:59
10 the Fidelity Freedom Funds should have been replaced by
11 the T. Rowe Price target date funds?

12 A. That was not our conclusion. Again, if you
13 look at the -- well, let me just take a quick look at
14 the score card to see what it produces.

15 Q. The only one that you concluded that should
16 replace the Fidelity Freedom Funds was the American 15:06:27
17 Funds target date funds.

18 A. Yeah, but I was just looking to see where those
19 two stacked up against the American Funds. Okay. But
20 you're right. I did not recommend.

21 Q. And the same with the JP Morgan target date
22 funds; correct?

23 A. I did not recommend.

24 Q. I forget if I asked this already, Mr. Marin, or 15:06:45
25 not.

1 Did you evaluate whether any of the other target
2 date funds that you described in Table 6 had any
3 outflows of investors or inflows from investors?

15:07:27

4 A. No, unless they like I said were disqualified
5 for overall size, no.

6 Q. Great.

7 Can you turn to paragraph 27 of your report?

8 A. Which report?

9 Q. Sorry. Good question. Your rebuttal report
10 which I believe has been marked as Exhibit 8.

11 A. So the one that we're already on here?

12 Q. Yeah.

15:07:59

13 A. Which paragraph, "26"?

14 Q. "27."

15 A. "27," sorry. Okay. I've got it.

16 Q. In paragraph 27 you criticize Dr. Wermers;
17 correct?

18 A. Yes.

19 Q. I guess you do that in a lot of places in this
20 report, but in paragraph 27 --

21 A. Not as much as he did of mine, but okay.

15:08:29

22 Q. You say that in the last sentence, "More
23 germane to those decisions is Exhibit 7 to the Wermers
24 report which shows a year-over-year decrease in large
25 plans offering the Freedom Funds from 2016 to 2018."

Page 215

1 Do you see that?

2 A. That's at the very end.

3 Q. Yeah. You can read the whole thing to

4 yourself. 15:09:00

5 A. Whole thing to myself first, so give me a
6 moment.

7 Q. Sure.

8 (Pause in the proceedings.)

9 THE WITNESS: Okay. I've read it. What was your 15:09:43
10 question?

11 MR. BLUMENFELD:

12 Q. Bear with me one second. I lost something on
13 my end that I need to find.

14 A. Uh-huh.

15 Q. In paragraph 27 at the end you say, "More 15:10:06
16 germane to those decisions is Exhibit 7 to the Wermers
17 report which shows a year-over-year decrease in large
18 plans offering the Fidelity Freedom Funds from 2016 to
19 2018."

20 A. Yes.

21 Q. What do you mean "more germane"?

22 A. Well, I think it's more relevant to the issue
23 that he's bringing up because he's using flows as some 15:10:28
24 sort of an indicator of whether or not the Freedom Funds
25 should or shouldn't have been retained, which as we know

1 is not really part of my analytical framework. But
2 since he brought it up in his report, I chose to rebut
3 it in this section, and what I've said is that I think 15:10:55
4 that Exhibit 7 showing the year-over-year decrease in
5 large plan offerings of Freedom Funds from '16 to '18
6 was more important than the other references he made to
7 flows.

8 Q. Okay.

9 More important in evaluating whether the Freedom
10 Funds should be removed from the plan and what the best
11 investment option would be for participants? 15:11:27

12 A. Yes.

13 Q. Okay.

14 Let's turn to Exhibit 7 to Dr. Wermers' report.
15 That would be, Mr. Marin, Exhibit 3 to your deposition.
16 We looked at it earlier.

17 A. Okay. I'm in Exhibit 3. What page?

18 Q. Page 115 of 200, which is Exhibit 7 to
19 Dr. Wermers' report that you were just citing and
20 referring to in your rebuttal report. 15:12:00

21 A. Page 115 you said?

22 Q. Page 115 of 200, yes.

23 A. All right. I have Exhibit 7.

24 Q. Okay.

25 And this is the exhibit that you were just

1 referring to in your rebuttal report; correct?

2 A. Yes.

3 Q. And I want to make sure that we avoid any 15:12:30
4 hindsight, because as you said, that's important in the
5 analysis.

6 And what you see as of 2015, according to
7 Dr. Wermers' report, there were 145 large plans that
8 offered the Fidelity Freedom Funds; correct?

9 A. Correct.

10 Q. And in 2016, did that number go up or down? 15:12:55

11 A. That went up by six.

12 Q. So there were six more plans that invested in
13 the Fidelity Freedom Plans as of 2016 than had been as
14 of 2015?

15 A. Correct.

16 Q. And then when you get to 2017, that number
17 drops to 150; correct?

18 A. Correct.

19 Q. Meaning between 2016 and the end of 2017, there
20 was only one plan that removed its investment in the
21 Fidelity Freedom Funds? 15:13:29

22 MR. BERIN: Object to form.

23 THE WITNESS: Only one plan shown on this report,
24 yes.

25 MR. BLUMENFELD:

1 Q. Yes.

2 And then if you look at the American Funds target
3 date funds, in 2016 how many plans were there?

4 A. Let me find the American Fund. In which year?

5 Q. 2016.

6 A. Fifteen.

7 Q. And when you get to 2017, how many were there? 15:13:57

8 A. Twenty-nine.

9 Q. Okay.

10 And obviously that increase of 14 plans did not all
11 or mostly come from plans that were invested in the
12 Fidelity Freedom Funds; correct?

13 MR. BERIN: Object to form.

14 THE WITNESS: Well, the numerical analysis would
15 indicate that at most one of those 14 plans, and I don't
16 know if that's even the case. 15:14:29

17 MR. BLUMENFELD:

18 Q. You and I agree on that.

19 And the time period that you say the Fidelity
20 Freedom Funds should have been removed is at the
21 beginning of 2017; correct?

22 A. That's correct.

23 Q. So what happens after that really would be
24 irrelevant to your analysis of whether the Freedom Funds
25 should have been removed from the plan or what

1 investment options should have been offered instead?

2 MR. BERIN: Object to form.

15:14:59

3 THE WITNESS: Yes. I would just point out one
4 thing, and that is I'm responding here, rebutting
5 Mr. Wermers' assessment, which indeed did cover a longer
6 period of time than my analytical framework for my first
7 prong of the removal analysis covered. So in my
8 response to him I referenced a period that was longer
9 than I would have in my framework analysis because I'm
10 responding to his observations.

15:15:25

11 MR. BLUMENFELD:

12 Q. Understood.

13 You didn't look at anything starting essentially Q1
14 of 2017 or thereafter, so in your analysis you wouldn't
15 have looked at any information about other investors in
16 that time period just like you wouldn't look at any
17 other information from that time period?

18 A. That is correct.

19 Q. Okay.

20 If we could have, I'm going to say, 20 minutes or
21 so? We are close to being finished, but I'd like to be
22 able to circle up with my team, if that's okay with you,
23 Alec, and Mr. Marin?

15:15:58

24 A. It's fine with me.

25 THE VIDEOGRAPHER: We are going off the record.

1 The time is 3:16.

2 (A recess is taken.)

3 THE VIDEOGRAPHER: We are back on the record. The
4 time is 3:36.

5 MR. BLUMENFELD:

6 Q. Mr. Marin, welcome back.

7 A. Thank you.

8 Q. You understand you're still under oath?

9 A. I do.

10 Q. And you have the same obligation to tell the
11 truth as if you were testifying live in front of a
12 judge?

13 A. Yes.

14 Q. Great. 15:36:30

15 So I think I asked you this question earlier today,
16 but I just want to make sure, and I don't get another
17 chance, so I want to make sure I ask it now.

18 When it comes to the alternative investments that
19 you evaluated, the only ones that you concluded would
20 potentially be appropriate for the Quanta plan are the
21 ones that you include in Table 6; correct?

22 A. Correct.

23 Q. And so the Freedom Index Funds, you don't know 15:36:56
24 why, what criteria of yours they didn't satisfy, but you
25 know they didn't satisfy some criteria, so they wouldn't

1 be appropriate for the Quanta plan as an investment
2 option, in your opinion; correct?

3 A. Correct.

4 Q. Okay.

5 Let's switch gears.

6 MR. BLUMENFELD: Mat, can you upload those 5500s?

7 MR. MCKENNA: Yes. I'll get them up in a second.

8 (Pause in the proceedings.)

9 MR. MCKENNA: They're all up now as Exhibits 9, 10,
10 and 11.

11 MR. BLUMENFELD: Thank you.

12 Q. So Mr. Marin, just to orient you, we've 15:38:27
13 uploaded exhibits to your deposition 9, 10, and 11 which
14 are Form 5500s. That's the plan annual report for the
15 Bear Stearns profit sharing plan --

16 A. Got it.

17 Q. -- from 2005, 2006, 2007.

18 A. Okay.

19 Q. You were in this plan during this time period;
20 correct?

21 A. Yes.

22 Q. And the reason we included the 2005, -6, and -7
23 ones is just to show you that the investment options 15:39:00
24 essentially were the same during that time period.

25 A. Okay.

1 Q. But if you go back to the back of the 5500,
2 you'll see the investment options.

3 A. Which one do you want me to click on?

4 Q. The 2005 one.

5 A. That's 0009?

6 Q. It is Exhibit 9 to your deposition, correct.
7 And I'm going to have to get you to the right page.

8 A. Okay. Hold on. Okay. I've got it. What 15:39:29
9 page?

10 Q. I'm working on it. It starts on page 27 of
11 125.

12 A. This says it's 50 pages. What page of the 50?

13 Q. Oh, I'm sorry. I opened the wrong one so bear 15:39:59
14 with me. I'll find the right one. Okay. Page 18 of
15 50.

16 A. Okay. I've got it. 15:40:28

17 Q. This lists several investment options in the
18 Bear Stearns defined contribution plan; correct?

19 A. It does.

20 Q. The first one is the Dreyfus Premier S&P STARS
21 Fund.

22 Do you see that?

23 A. Wait a minute.

24 Q. In the middle of the page.

25 A. Yes, Dreyfus Premier S&P STARS Fund.

1 Q. And there's the Dreyfus Premier Intrinsic Value
2 Fund?

3 A. Correct.

4 Q. The Pacific Investment Management Company Total 15:40:59
5 Return Fund?

6 A. Yes.

7 Q. The Columbia Acorn Fund?

8 A. Yes.

9 Q. The Royce Low-Priced Stock Fund?

10 A. Yes.

11 Q. The American EuroPacific Growth Fund?

12 A. That's the next page.

13 Q. It is.

14 A. Got it.

15 Q. The Vanguard PRIMECAP Fund?

16 A. Yes.

17 Q. The Dreyfus Premier Alpha Growth Fund?

18 A. Yes.

19 Q. The Longleaf Partners Fund?

20 A. Yes.

21 Q. The Putnam Asset Allocation Balanced Portfolio? 15:41:27

22 A. Yes.

23 Q. The Dreyfus Premier International Value Fund?

24 A. Yes.

25 Q. The Ostein Financial Alert Fund?

1 A. Yes.

2 Q. The Dreyfus Premier Core Bond Fund?

3 A. Yes.

4 Q. The Massachusetts Financial Services -- that's
5 MFS -- Value Fund?

6 A. Yes.

7 Q. The Dreyfus Premier Limited Firm High Yield
8 Fund?

9 A. Yes.

10 Q. The Fidelity Advisor Growth Opportunities Fund?

11 A. Yes.

12 Q. The Dreyfus Premier High Income Fund? 15:41:57

13 A. Yes.

14 Q. The Barclays Global Investors Equity Index
15 Fund?

16 A. Yes.

17 Q. The State Street Global Advisors Aggressive
18 Strategic Balanced Fund?

19 A. Yes.

20 Q. The State Street Global Advisors Moderate
21 Strategic Balanced Fund?

22 A. Yes.

23 Q. And the State Street Global Advisors
24 Conservative Balanced Fund?

25 A. Yes.

1 Q. And then on the next page the BlackRock Large
2 Cap Core Equity Fund?

3 A. Yes.

4 Q. So first of all, at the bottom of page 19 of 50 15:42:28
5 it identifies the aggressive, moderate, and conservative
6 funds.

7 Do you see that?

8 A. Yes.

9 Q. Those are what you were describing as lifestyle
10 funds; correct?

11 A. They seem like they might be, yes.

12 Q. But they don't actually adjust their allocation
13 over time. A participant just gets to decide if they
14 want to invest more aggressively or moderately or
15 conservatively. 15:43:00

16 Correct?

17 A. Correct.

18 Q. Do you recall, having seen the list of these
19 funds, which ones you were invested in?

20 A. No.

21 Q. Okay.

22 But there was no target date funds offered in this
23 plan; correct?

24 A. Right.

25 Q. And would it surprise you to know that many of

Page 226

1 these funds would fail the monitoring criteria that you
2 articulate in paragraph 31-A, B, C, D, E of your report
3 in this case?

4 MR. BERIN: Object to the form.

15:43:27

5 THE WITNESS: I have no way of knowing.

6 MR. BLUMENFELD:

7 Q. I know.

8 I'm asking, would it surprise you to know that?

9 MR. BERIN: Same objection.

10 THE WITNESS: You know, would it surprise me to
11 know that? No. It wouldn't surprise me because I --
12 This, one, was a long time ago, and two, I was not
13 paying particular attention to these funds, and I
14 certainly wasn't applying this framework against them in 15:43:58
15 my assessment of those funds at the time.

16 MR. BLUMENFELD:

17 Q. What difference does it make that it was a long
18 time ago?

19 A. Well, the difference it makes is that I'm just
20 saying I'm not familiar enough with these funds to tell
21 you whether it would surprise me. The State Street
22 Global Advisors is a reputable firm. They're balanced 15:44:25
23 funds. As shown here, I'm sure were reasonably well
24 managed, but that's all I know about them from just
25 looking at this list. I could not have picked these out

1 if you'd asked me to name funds that were in the Bear
2 Stearns funds.

3 So that's why the issue of responding the way you
4 have asked me about whether I would be surprised is hard
5 to answer. I don't have any reason to be surprised or 15:44:58
6 not surprised, to be honest with you.

7 Q. Well, I guess I'm a little confused then
8 because I thought the criteria that you were using and
9 applying in your report is the criteria that retirement
10 plan individuals utilize on a regular basis.

11 MR. BERIN: Object to the form.

12 THE WITNESS: What I'm saying is that that is a
13 mechanism which -- and that is a framework that is
14 typically used in the industry. 15:45:30

15 MR. BLUMENFELD:

16 Q. Right.

17 And so why would not -- why would not that
18 mechanism be used at the firm that you were the head of?

19 MR. BERIN: Object to the form of the question.

20 THE WITNESS: As we've established, I was not the
21 head of Bear Stearns. I was the head of the buy side
22 operation, which is Bear Stearns Asset Management, and
23 this 401K plan was not one that I was involved with as a 15:45:58
24 fiduciary. I was involved as a participant. And there
25 is simply no way for me to recall what was going on with

1 these individual funds and how they were assessed at the
2 time because I was not part of that assessment group.

3 MR. BLUMENFELD:

4 Q. You weren't the ex officio member at the Bear
5 Stearns committee?

15:46:30

6 A. No. I said I was the ex officio at the
7 Deutsche Bank, Deutsche Asset Management Funds.

8 Q. Okay.

9 And if we looked at the Deutsche 401K plan, would
10 it surprise you to know that the Deutsche 401K plan also
11 had investment options that would fail the criteria you
12 articulate in 31-A, B, C, D, E?

13 MR. BERIN: Object to the form of the question.

15:46:58

14 THE WITNESS: I have no way of answering that
15 question because it's -- I have -- Number 1, I have
16 nothing in front of me to talk to on those issues, and
17 then I would have to look at the performance back in
18 that time frame, so I can't answer your question.

19 MR. BLUMENFELD:

20 Q. But you know what criteria Deutsche would have
21 applied to monitoring the investment options?

22 A. I know the sorts of criteria they would apply.

15:47:29

23 I'm not -- I don't recall their IPS. I would have to
24 review their IPS to refresh my understanding of their
25 IPS and the criteria that they enforced upon themselves

1 for their review process and monitoring process.

2 Q. And as you sit here today, you don't know if
3 the monitoring criteria that Deutsche applied or that 15:47:56
4 Bear Stearns applied was similar or different from the
5 monitoring criteria that you described in
6 paragraphs 31-A, B, C, D, and E of your report?

7 MR. BERIN: Object to the form of the question.

8 THE WITNESS: What I'm comfortable saying, since I
9 am familiar with those firms and how they managed their
10 affairs, I'm comfortable saying that most of the
11 criteria that I used to evaluate the performance and do 15:48:27
12 the monitoring of the funds in my report are similar to
13 the criteria that were used by those two firms.

14 Again, I have to account for a difference in time
15 frames. This would have been '05 to '07 for Bear
16 Stearns. For Deutsche Bank it would have been '99,
17 2000, 2001, but I can't respond more specifically than 15:48:58
18 that.

19 MR. BLUMENFELD:

20 Q. I'm confused again when you referenced time
21 period, because my understanding was that your opinion
22 about the appropriate monitoring criteria doesn't change
23 with what time period we're talking about or what year
24 we're talking about, does it?

25 A. Actually, you misinterpreted what I said. What

1 I would say is that the fundamentals that are listed 15:49:25
2 here were fundamentals that would be applied in any time
3 frame. The specifics of the IPS and what mechanisms the
4 committee was charged to use to look at might change
5 over time because there certainly is some change in a
6 company's perspective about how to evaluate their plan 15:49:56
7 participants' funds, or participant funds, and that
8 would have to be incorporated in the review. The
9 fundamentals of tracking against the benchmark, the
10 fundamentals of doing peer review and looking at the
11 median of the peer results, the fundamentals of using
12 the type of analysis of Sharpe ratio, Alpha, information 15:50:25
13 ratio, those would not change. Those are fairly
14 consistent. But what's called for in the IPS might
15 change over time just as we've seen it does in the case
16 of Quanta. It gets refined and tweaked at the ends, and
17 the approach is dictated. And what is important is what
18 is called for in the IPS and then, like I've said,
19 overlaid with what is the practice in the industry at 15:50:59
20 the time.

21 Q. So I want to make sure that I understand this
22 correctly.

23 You said that you were confident that at Deutsche
24 Bank and at Bear Stearns they would have looked at
25 performance versus peer groups. They would have looked

1 at Sharpe ratios, they would have looked at information
2 ratios, and they would have looked at performance versus
3 benchmarks but maybe not in the same way that you look 15:51:27
4 at them in paragraph A, B, C, D, E; is that right?

5 A. There might have been some subtle differences
6 called for in the IPS based on the thinking of the
7 committee at the time.

8 Q. Got it.

9 And the way that Bear Stearns and Deutsche Bank
10 might have looked at investment options by looking at
11 peer groups and ratios might have been the way that
12 Quanta looked at performance against benchmarks and peer
13 groups and Sharpe ratios and information ratios; 15:51:59
14 correct?

15 A. It may have been, yes.

16 Q. Okay.

17 I don't think I have any further questions for you,
18 Mr. Marin.

19 A. Okay. Thank you.

20 MR. BLUMENFELD: Are you done, Alec?

21 MR. BERIN: I attempted since you told me I had it
22 easy earlier, but I do not have any questions for
23 Mr. Marin. Thank you.

24 THE VIDEOGRAPHER: We are going off the record at
25 3:52 p.m., and this concludes today's testimony given by 15:52:25

1 Richard A. Marin. The total number of media units used
2 was five and will be retained by Veritext Legal
3 Solutions.

4 THE REPORTER: Mr. Berin, do you want a copy?

5 MR. BERIN: Yes, and standard delivery is fine.
6 But if you have a rough to send around, that would be
7 great too.

8 MR. BLUMENFELD:

9 Q. Mr. Marin, thank you for your time and have a
10 good weekend.

11 A. You too. Bye-bye.

12 THE REPORTER: Do you want a rough too,
13 Mr. Blumenfeld?

14 MR. BLUMENFELD: Yes. And thank you for your time
15 and help today.

16 (Whereupon the documents referred to are marked by
17 the reporter as Defense Exhibits 1 through 11 for
18 identification.)

19 (The proceedings concluded at 3:52 p.m.)

20 (Signature on following page.)
21
22
23
24
25

I declare under penalty of perjury under the laws
of the State of California that the foregoing is true
and correct.

Executed at _____, California,
on _____.

RICHARD A. MARIN

1 STATE OF CALIFORNIA) ss

2
3 I, BONNIE ANN GROSE, CSR 11703, do hereby declare:

4
5 That, prior to being examined, the witness named in
6 the foregoing deposition was by me duly sworn pursuant
7 to Section 2093(b) and 2094 of the Code of Civil
8 Procedure;

9
10 That said deposition was taken down by me in
11 shorthand remotely and thereafter reduced to text under
12 my direction.

13
14 I further declare that I have no interest in the
15 event of the action.

16
17 I declare under penalty of perjury under the laws
18 of the State of California that the foregoing is true
19 and correct.

20
21 WITNESS my hand this 1st day of November, 2024.

22 
23

24 BONNIE ANN GROSE, CSR 11703
25

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1 ALEC J. BERIN, ESQUIRE

2 ajberin@millershah.com

3 November 1, 2024

4 RE: Laliberte, Mary Et Al v. Quanta Services Inc Et Al
5 10/18/2024, Richard A. Marin (#6946843)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com

16 Return completed errata within 30 days from
17 receipt of testimony.

18 If the witness fails to do so within the time
19 allotted, the transcript may be used as if signed.

20
21
22 Yours,

23 Veritext Legal Solutions
24
25

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Laliberte, Mary Et Al v. Quanta Services Inc Et Al
Richard A. Marin (#6946843)

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Richard A. Marin

Date

[& - 2003]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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